exhausting all other entry options. They were then greeted by Plaintiff's sister who informed them that Plaintiff was on the second floor of the residence and directed them to the stairs. Officers then encountered another resident on the second floor who directed them to the room Plaintiff had barricaded himself in. When the Officers identified themselves, ***Plaintiff refused to allow the officers into the room, screamed that he refused to return back to jail, and yelled at the Officers that they would have to kill him. Plaintiff had barricaded his year-old daughter in the room with him.***

At this point Officers S.E., P.E., B.L., J.O., M.Y., F.L., T.U., and G.A. arrived on location and joined A.R. and P.A. (collectively "the Officers") in the hallway. ***The Officers repeatedly attempted to speak with Plaintiff and coax him into opening the door. As a precaution due to Plaintiff's size and the harm he had already caused, Sergeant P.A. deployed the probes of his taser but did not tase Plaintiff*** once he opened the door. Plaintiff immediately slammed and locked the door once again, barricading himself. The Officers then followed protocol and utilized a Halligan bar to make entry and the Officers entered the room. ***Plaintiff began violently assaulting the Officers and caused Officers B.L. and P.E. physical injury and the destruction of Officer P.E.'s prescription eyeglasses. Officer G.A. picked up the small child during this altercation and shielded her with his body. Fearing for his safety, the safety of the infant, and the safety of the other Officers on scene, Officer S.E. deployed the probes of his taser and tased Plaintiff,*** which resulted in Plaintiff ceasing his assault on the Officers. Plaintiff was then taken into custody by the Officers and removed from the house. Plaintiff attempted to drag Officers A.R. and T.U. down the staircase in the house as he was being escorted out. The Officers acted in accordance with Town City Police protocol in their official capacities and only

escalated their use of force as necessary to ensure the safety of themselves as well as the one-year-old infant.

II. PLAINTIFF K.S. – ALLEGED DAMAGES

Plaintiff has failed to establish any actual damages. Plaintiff has asserted a claim for physical injuries incurred during his arrest but has failed to produce any documentation stating the alleged injuries, any medical treatment sought, or any medical expenses incurred. Plaintiff is also asserting that he sustained severe and significant emotional distress for which he sought treatment. While Plaintiff did seek mental health treatment, he stated to his clinician multiple times that he was only in treatment to comply with Child Welfare Services to regain custody of his infant son, who was not yet born at the time of the incident in question. Plaintiff failed to show up for twenty of his thirty-six scheduled appointments and when plaintiff did attend his appointments, he was chronically "extremely late" according to his clinician's notes. Plaintiff was not billed for the appointments he did not attend and has not produced invoices for the appointments he allegedly was billed for. Plaintiff has also failed to produce any information pertaining to any alleged property damage caused by the defendants.

III. WITNESSES

1. Officer A.R. will testify to the incident of Mr. K.S. arrest and the events as they transpired on November 19, 2012.
2. Officer T.U. will testify to the incident of Mr. K.S. arrest and the events as they transpired on November 19, 2012.

3. Sergeant P.A. will testify to the incident of Mr. K.S. arrest and the events as they transpired on November 19, 2012.
4. J.A., defense's contractor, will testify as an eyewitness to plaintiff's conduct on November 19, 2012.

IV. **EXHIBITS**

1. All State Police Records of Plaintiff's Investigation and Arrest.
2. All Deposition Transcripts taken during the course of discovery.
3. All Photographs of Areas Relevant to the Investigation.
4. All Plaintiff's Criminal and Psychiatric Records.
5. Defense reserves the right to utilize any exhibits listed by plaintiff at the time of trial.

V. **LEGAL ISSUES**

Whether the defendants were covered by qualified immunity when they acted within their professional capacity when they legally arrested plaintiff on November 19, 2012, without violating plaintiff's Fourth Amendment rights after plaintiff refused to speak with defendants, verbally and physically assaulted multiple Town City Police Officers resulting in physical injury, resisted and evaded arrest, as well as endangered the safety of plaintiff's infant child. Further, and more to defendants' lack of legal responsibility, plaintiff had an extensive criminal history and was on probation on November 19, 2022. Plaintiff only yelled curses at the Officers and would not speak with Officers about the situation before Plaintiff unilaterally escalated it, and requested that the Officers kill him, which they did not do. Moreover, plaintiff failed to attend a substantial majority of his mental health appointments and did not pursue said treatment to cope

with the events of November 19, 2022, but to comply with Child Welfare Services requirements to have his other child returned to his custody, contrary to his severe emotional distress claim.

VI. **LENGTH OF TRIAL**

Four days.

VII. **SETTLEMENT**

The defendants, Officer A.R., Sergeant P.A., Officer G.A., Officer S.E., Officer P.E., Officer T.U., Officer F.L., Town Housing Authority, and the City of Town will settle for the sum of $25,000 in full settlement of the claims brought by plaintiff against defendants if it is accepted at the time of the settlement conference.

WOLFRAM & ASSOCIATES, LLP

BY: _____

RACHAEL WOLFRAM
Attorney for Defendants

Applicant Details

First Name	**Konnor**
Middle Initial	**L**
Last Name	**Woodburn**
Citizenship Status	**U. S. Citizen**
Email Address	**kwoodburn99@gmail.com**
Address	**Address** **Street** **11 Cooper St. Apt 334** **City** **Camden** **State/Territory** **New Jersey** **Zip** **08102** **Country** **United States**
Contact Phone Number	**8016948131**

Applicant Education

BA/BS From	**University of Utah**
Date of BA/BS	**May 2021**
JD/LLB From	**Rutgers University School of Law--Camden** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23101&yr=2011**
Date of JD/LLB	**May 31, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Rutgers University Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Hunter Appellate Advocacy Moot Court** **Intrumural Mock Trial Team**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Finkelstein, Veronica
vf112@camden.rutgers.edu
Robbins, Ruth Anne
ruthanne@camden.rutgers.edu
(856) 225-6456
Pearce, John
jpearce@utcourts.gov
8012387935

This applicant has certified that all data entered in this profile and any application documents are true and correct.

KONNOR WOODBURN
11 Cooper St., Apt. 334 Camden, NJ 08102
kwoodburn99@gmail.com 801-694-8131

6/01/2023

The Honorable Juan Sanchez
United States District Judge
Eastern District of Pennsylvania

Dear Chief Judge Sanchez

I am a first-generation law student and *Rutgers Law Review* Executive Board member applying for a law clerk position in your chambers beginning in 2024. I possess a diverse LGBTQ+ background, strong research practices and critical thinking skills, and a passion for trial work. I also have a competitive academic record which indicates my ability to improve my GPA while overcoming challenges such as making a difficult transition to a law school across the country. My interest in working for the judiciary has been a motivating factor in my law school success and I am looking forward to having that opportunity with you in Philadelphia.

As my resume indicates, I worked for Associate Chief Justice Pearce at the Utah Supreme Court last summer. While working in his chambers, I researched complex legal issues ranging from the fundamental rights of parents to statutory interpretation of criminal codes. I was fortunate to work in a court where I was invited to discuss oral arguments, legal strategies, and prominent theories of law with the Justice and his staff in addition to performing important legal work. My interaction with Justice Pearce and his clerks gave me an informed understanding of the judicial process and significantly strengthened my legal reasoning and analysis skills.

With respect to litigation, I worked as an intern with the US Attorney's Office in Philadelphia this spring, where I handled matters involving employment discrimination and federal tort claims. While there I also was tasked with preparing trial memorandums to be filed in court. I have also begun working for the Federal Public Defender's Office in Camden this summer, furthering my significant interest in criminal law. I expect these experiences to expand on my passion for government litigation and working in public interest areas.

My qualifications include strong academic performance and extensive writing skills. Prior to joining the Rutgers Law community, I researched and wrote a 25-page discourse analyzing the voting patterns of Supreme Court justices, for which I was awarded my school's Undergraduate Research Scholar designation. I possess a strong command of the Federal Rules of Evidence, as well as criminal and civil procedure. I also have been able to pursue advanced instruction in trial advocacy through multiple hands-on experiences and internships.

I look forward to speaking with you about my qualifications to serve as your law clerk here in Pennsylvania.

Respectfully,

Konnor Woodburn

KONNOR WOODBURN

11 Cooper St., Apt. 334 Camden, NJ 08102
kwoodburn99@gmail.com 801-694-8131

EDUCATION

RUTGERS LAW SCHOOL, Camden, NJ GPA: 3.41
Candidate for Juris Doctor, May 2024
Select Courses: Evidence (A), Legal Research & Writing (A-), Constitutional Law (A-), Civil Procedure (A-), Criminal Procedure (A-), Remedies, Federal Courts
Activities: Senior Commentaries Editor - Rutgers University Law Review
Dean's Pro Bono Publico Award for Exceptional Service (expected 2024)
Legal Research and Writing Fellow

Commentary: The Future of Criminal Conflicts: Ideological Biases & Effective Counsel
76 RUTGERS U. L. REV.COMMENTS (forthcoming 2023-24)

UNIVERSITY OF UTAH, Salt Lake City, UT
Bachelor of Science in Political Science, May 2021
Minor in History, Minor in Peace and Conflict Studies
Honors: Dean's List
Undergraduate Research Scholar
University of Utah Honors Program
Thesis: "The Swing Justice: The Figure that Shapes the Supreme Court"

EXPERIENCE

FEDERAL PUBLIC DEFENDER'S OFFICE – DISTRICT OF NEW JERSEY, Camden, NJ
Intern Selected for the Camden office of the FPD, May, 2023 – August, 2023

U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, Philadelphia, PA
Intern in the office's Civil Division, January, 2023 – April, 2023

- Worked on a variety of civil matters including analysis of discovery materials, preparation for depositions, and creation of written trial motions.

UTAH SUPREME COURT, Salt Lake City, UT
Judicial Intern for Associate Chief Justice John A. Pearce, June, 2022 – August, 2022

- Analyzed case briefs and prepared a criminal law bench memo with recommendations on rulings and significant procedural/statutory analysis.
- Participated in case discussions analyzing appellate arguments and completed research projects on topics for potential future appeals.

ADDITIONAL INFORMATION

I am an Eagle Scout and member of the LGBTQ+ community who enjoys trying new restaurants, traveling across the country, and singing in choirs! I also have a long history of working in the service industry as a restaurant server and retail customer service associate.

RECORD OF: KONNOR WOODBURN

STUDENT NUMBER: 212004602

RECORD DATE: 06/05/23 PAGE: 1

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR GRADE

Summer 2021 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

CONTRACTS	24	601	511		L1	4.0	B
TOTAL CREDITS ATTEMPTED:						4.0	

DEGREE CREDITS EARNED: 4.0 TERM AVG: 3.000 CUMULATIVE AVG: 3.000

Fall 2021 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

CIVIL PROCEDURE	24	601	501		02	4.0	A-
LAWR I	24	601	530		02	2.5	B
TORTS	24	601	541		02	4.0	B
TOTAL CREDITS ATTEMPTED:						10.5	

DEGREE CREDITS EARNED: 14.5 TERM AVG: 3.255 CUMULATIVE AVG: 3.185

Spring 2022 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

CONSTITUTIONAL LAW	24	601	506		01	4.0	A-
CRIMINAL LAW	24	601	516		02	4.0	B
PROPERTY	24	601	536		01	4.0	B
LAWR II	24	601	550		02	2.5	A-
TOTAL CREDITS ATTEMPTED:						14.5	

DEGREE CREDITS EARNED: 29.0 TERM AVG: 3.301 CUMULATIVE AVG: 3.243

Summer 2022 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

EVIDENCE	24	601	556		L1	3.0	A
TOTAL CREDITS ATTEMPTED:						3.0	

DEGREE CREDITS EARNED: 32.0 TERM AVG: 4.000 CUMULATIVE AVG: 3.314

** CONTINUED ON NEXT PAGE **

RECORD OF: KONNOR WOODBURN

STUDENT NUMBER: 212004602

RECORD DATE: 06/05/23 PAGE: 2

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
Fall 2022 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
PROFESS RESPONSIB	24	601	582		01	2.0		A+
ALT DISPTE RESOLUTN	24	601	591		01	2.0		B
CRIM PRO-INVST PROCS	24	601	655		11	3.0		A-
CRIM PRO:ADJUDCTN	24	601	656		01	3.0		A-
LAWR TEACHINGASSIST	24	601	751		01	1.5	P	PA
RUTGERS LAW REVIEW	24	601	760		01	0.5	P	PA
INTRAMOCKTRIALTEAM	24	601	771		11	3.0		B+
TOTAL CREDITS ATTEMPTED:						15.0		
DEGREE CREDITS EARNED: 47.0 TERM AVG: 3.590 CUMULATIVE AVG: 3.394								
Spring 2023 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
CIV RIG LIT -CUR ISS	24	601	526		01	3.0		A-
APPELLATE ADVOCACY	24	601	560		11	2.0		A
REMEDIES	24	601	561		01	3.0		PA
EMPLOYMNT DISCRIM	24	601	605		01	3.0		B+
RUTGERS LAW REVIEW	24	601	760		01	0.5	P	PA
WHITE COLLAR CRIME	24	601	776		11	2.0		B
TOTAL CREDITS ATTEMPTED:						13.5		
DEGREE CREDITS EARNED: 60.5 TERM AVG: 3.500 CUMULATIVE AVG: 3.413								
Summer 2023 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
FOURTH AMENDMENT PRA	24	601	624		90	2.0		
SEX CRIMES	24	601	646		90	2.0		
TOTAL CREDITS ATTEMPTED:						4.0		
DEGREE CREDITS EARNED: TERM AVG: CUMULATIVE AVG:								
Fall 2023 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
NJ LAW AGAINST DISCR	24	601	531		20	2.0		
ISLAMIC LAW	24	601	542		01	3.0		
ESTATES AND TRUSTS	24	601	627		20	3.0		
SECURED TRANSACTIONS	24	601	690		90	3.0		
FEDERAL COURTS	24	601	692		01	3.0		
RUTGERS LAW REVIEW	24	601	760		01	1.0	J	
TOTAL CREDITS ATTEMPTED:						15.0		
DEGREE CREDITS EARNED: TERM AVG: CUMULATIVE AVG:								

Last Term Information

LAST TERM CREDIT HOURS:	13.5
LAST TERM CREDITS IN GPA:	10.0
LAST TERM POINTS IN GPA:	35.0
LAST TERM CUMULATIVE CREDITS IN GPA:	55.0

** CONTINUED ON NEXT PAGE **

RECORD OF: KONNOR WOODBURN

STUDENT NUMBER: 212004602

RECORD DATE: 06/05/23 PAGE: 3

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE

LAST TERM CUMULATIVE POINTS IN GPA: 187.7

***** END OF TRANSCRIPT *****

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing this letter of recommendation on behalf of Konnor Woodburn, a Rutgers Law student who is now applying for a clerkship with your chambers. I enthusiastically recommend Mr. Woodburn. He would be a terrific addition to your chambers.

Let me begin by telling you how I know Mr. Woodburn. I am an Assistant United States Attorney for the Eastern District of Pennsylvania who also serves as adjunct faculty at several area law schools, including Rutgers Law School. I was Mr. Woodburn's professor for Evidence last summer, and he is now both enrolled in my Appellate Advocacy class and I am supervising him as a law student intern at the U.S. Attorney's Office. In these capacities, I have had ample opportunity to observe Mr. Woodburn's considerable legal skills. I have also had a chance to get to know him on a more personal basis. I feel well situated to address his considerable skills.

From the moment I met Mr. Woodburn, he demonstrated unusual initiative. He reached out to me in the first week of Evidence class. He articulated his career goals and the detailed list of experiences he hoped to gain prior to graduation in furtherance of those goals. He knew what he had learned in law school classes and he knew what practical skills she needed to gain in order to augment that in-class learning. It was clear that he wanted to become a successful, well-rounded practitioner and that he had a plan for acquiring the necessary training and skills. In all my years of interacting with students, he is one of the few I've met who was this attuned to his own professional development. That type of initiative is rare. It illustrates who he is as a person.

After impressing me at our first meeting, he continued to impress me throughout his time in my Evidence class. My Evidence class is fairly unique—it is designed as an immersive, skills-based course where each student learns the Federal Rules of Evidence by "litigating" two mock cases (one civil, one criminal). Throughout the course, the students perform direct and cross examinations, demonstrating their ability to apply the rules in a realistic trial setting. The class is highly interactive. The class is unlike other doctrinal law school classes and quite challenging.

Mr. Woodburn rose to the occasion. Each of his skills demonstrations was well performed. He also demonstrated a comprehensive, functional, and practical understanding of the rules on his final exam. It is for this reason that he earned an A in the class. This grade demonstrates his capacity to absorb complex information. It also reflects the array of practical skills he has developed. I anticipate he would quickly learn the nuances of the many different cases on your docket and that his functional knowledge of evidence and trial procedure would render his performance closer to that of a practitioner than of a newly-graduated law student.

Since he joined the U.S. Attorney's Office this semester, I have had an opportunity to observe Mr. Woodburn's written skills. His written work product demonstrates a full-depth engagement and excellent case analysis skills. He has also displayed an ability to think and work independently. He requires little supervision and no micromanagement. I have no doubt he would write bench memoranda and draft opinions that you would find useful in your chambers.

Focusing on these "hard" skills, however, does not fully convey Mr. Woodburn's positive qualities. He is mature, professional, and focused. He has been a pleasure to work with and a true team player. Everyone enjoys working with him and I believe you will too.

I hope you will seriously consider Mr. Woodburn's candidacy. He is a good candidate "on paper," and an even better candidate "in person." If you extend him an interview, and meet him, I am sure you will agree. It would be my pleasure to discuss his candidacy at any time. To that end, I have provided my contact information below.

Respectfully,

Veronica J. Finkelstein, Esquire
vf112@camden.rutgers.edu
215.680.3575

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend Konnor Woodburn as a judicial clerk in your chambers. I taught Konnor in his first year of law school and worked with him during the fall semester when he served as a teaching assistant for my course. Konnor is an earnest and hard-working student whose skills are both strong for his level and developing at a quick pace. I know that he is anxious to clerk in a state court setting, and I think he would be an asset in judicial chambers.

Last year I taught Konnor in our year-long 1L course series, Legal Analysis, Writing, and Research. To provide context, I set up the course to focus on client-centeredness from the get-go. Konnor worked on several documents, in different roles. In the fall semester I assign short-form analytical writing (the “email memo”) in which students inform a supervising attorney who is waiting for the email before contacting the client; a longer-form counseling-centered writing (the predictive, counseling memo) that upon revision becomes a client letter sent to in-house counsel; and bench memo written to a state court appellate panel from the perspective of a judicial law clerk (set up to require students to use persuasion to justify their recommendations). I further require each student to complete multiple research assignments and assessments to make them comfortable on both major legal research platforms.

In the spring semester students work on a state-level appellate brief, spending time learning more in-depth research skills and different forms of legal analysis and argumentation. I also teach students the nature of legal storytelling and the role of advocate, working with a client. Students complete multiple drafts of that assignment prior to submission.

Throughout the entirety of the academic year, Konnor was one of the most active participants in the course. He sat towards the front of the classroom and volunteered to speak at least once every class. During these strange teaching times, I cannot stress enough how much professors appreciate seeing students engage at that level. Having a student as interested and curious as Konnor helps keep up the energy of the room.

In the fall semester, Konnor earned a grade that ranked him in the middle of the class. Not satisfied with that, he worked even harder in the spring semester to deepen his analysis, and emerged one of the best-performing students in the course. In the last week before the final submission, he came to me with a question and I recognized that he had gone down the wrong path with one of his arguments. I pointed that out and hoped for the best. Konnor did not disappoint: in the final version of the brief he wrote a cogent, persuasive argument that was right on point. I was impressed enough for that to create a memory for me—something that’s not all that easy for a student to do when one has taught as many students as I have at this point.

Based on Konnor’s upward trajectory and tenaciousness with his learning, I invited Konnor to serve this year as one of the course “teaching fellows” (a/k/a teaching assistants). These teaching fellows serve as a support system for the first-year students. They do not grade papers, but they can read drafts and advise students. Participation by the first-year students is voluntary although highly recommended. Of my five teaching fellows, Konnor was the only one able to persuade every one of his assigned 1L students to meet with him. That spoke volumes to me about his approachability and compassion.

Overall, Konnor is a strong student, and getting stronger each semester. As a former clerk to a state appellate court, I fully endorse him as a clerk in chambers.

Best wishes on your selection process.

Ruth Anne Robbins - ruthanne@camden.rutgers.edu - (856) 225-6456

Supreme Court
of the
State of Utah

Chambers of
Associate Chief Justice
John A. Pearce

Matheson Courthouse
450 South State Street, 5th Floor
PO Box 140210
Salt Lake City, Utah 84114-0210
Telephone: (801) 238-7935
Email: pearcechambers@utcourts.gov

June 9, 2023

Re: Recommendation of Konnor Woodward

To Whom It May Concern:

Konner has asked me to provide him with a letter of recommendation. I am very pleased to do so. Konner was a intern in my chambers during the summer of 2022 and proved himself to be a valuable contributor to the work we do.

Konner worked very hard. He is very bright and his talents and abilities showed in his assignments as he did great work. I had the chance to see both Konner's research and writing abilities. He possesses superior skills in both. His research was spot-on and thorough. His writing was clear and persuasive. He had the ability to understand how the assignments we gave him fit into the larger picture of our work. Consequently, he produced work product that was very helpful. I have no doubt that he has all of the tools to be a great attorney.

In addition to his technical skills, Konner is a great person and a pleasure to have in chambers. He participated in chambers discussions and worked well with my full time clerks. We were always happy to hear his contributions to our discussions and sad to say goodbye to him at the end of the semester.

In short, I have no hesitation recommending Konner. I would be happy to answer any questions you may have about Konner or his work.

Sincerely,

John A. Pearce
Justice

Writing Sample: Summary Judgment Motion

This is a Motion for Summary Judgment that I wrote during my 2L year. The plaintiff brought a case of employment discrimination in the U.S. District Court for the Eastern District of Pennsylvania. In this motion I provided the district court with the Third Circuit's governing law on employment discrimination and the requirements for summary judgment, as well as the facts relevant to the analysis. I argued that the trial court should grant the defendant's Motion for Summary Judgment because the plaintiff was unable to overcome the legitimate business reason for termination, and thus could not make out a claim of employment discrimination.

This motion demonstrates my understanding of federal employment discrimination law. It also illustrates how the plaintiff in this case, based on the standards laid out in the Third Circuit, did not meet their burden to avoid summary judgment. There are a few minor formatting changes recommended by my supervisor, but the vast majority of it is my own work. Names and dates have been changed in order to comply with confidentiality requirements. The law is current through May 2023.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

LAURA TAYLOR,

Plaintiff,

V. Civil Action No.

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT THE FEDERAL BUREAU OF INVESTIGATION'S
MOTION FOR SUMMARY JUDGMENT

Plaintiff Laura Taylor, a former IT Specialist for the Federal Bureau of Investigation, brings this action against defendant THE Federal Bureau of Investigation under the Americans with Disabilities Act. This action stems from the FBI's termination of Taylor in 2019 for failing to comply with a Performance Improvement Plan and remaining at an "Unacceptable" level of work performance. Taylor claims that this termination was discrimination against her because of a disability which was related to her pregnancy, and therefore her sex. Taylor also asserts that the FBI retaliated against her for filing an accommodation request, which is a protected activity.

For three reasons, all of Taylor's claims fail and the FBI's motion for summary judgment should be granted. *First,* Taylor cannot demonstrate that the FBI fired her based on her disability. The record shows significant support for the FBI's legitimate business decision to fire her for poor performance, including emails and official documentation indicating numerous job-related issues. *Second,* Taylor cannot prove that she was fired in retaliation for making an accommodation request to her employer. There is no record evidence that indicates anyone at the FBI was aware of Taylor's alleged disability until after her termination. There is also no

evidence that Taylor actually submitted a formal request for an accommodation, as an exhaustive search done by the FBI after Taylor's termination showed no accommodation requests in her name. *Third*, any other complaints about the behavior of her coworkers and supervisors do not rise to the pervasive level required to make a showing of hostile work environment.

I. FACTUAL BACKGROUND

Laura Taylor joined the FBI in 1999 as an IT Specialist. FBI Investigative Rep. p. 11. Taylor went on maternity leave in October 2016. *Id.* at 90. Per her doctor's recommendation, Taylor returned to work on a part-time basis after returning from maternity leave in March 2017. *Id.* at 70. Taylor's supervisor during the period in question was Supervisory Information Technology Specialist (SITS) Veronica James. *Id.* at 11.

On May 31, 2018, members of the SAC Advisory Committee met to discuss various workplace concerns. *Id*. During this meeting, concerns were raised about the "dedicated ITSU employee assigned to handle computer/print matters" who had been the subject of complaints by other FBI employees. *Id.* at 130. The complaint read, in part, that "the employee is very often slow to respond, requests tickets be submitted for even the most minor issues, and even when a ticket is submitted, response is slow and can take weeks before addressed." *Id.* In addition, the complaint read "No one seems to know what schedule this employee works, or when she is in the office." *Id.* The handwritten notes on the documents show the employee referenced in the complaint was Taylor. *Id.* at 131.

On June 5, 2018, ASAC Ballard and SITS James met with Taylor to discuss the local SAC Advisory Committee complaint regarding Taylor's performance. *Id.* at 154-61. The record shows additional performance deficiencies by Taylor were documented on June 11, 2018, June 19, 2018, June 21, 2018, June 25, 2018, July 10, 2018, July 11, 2018, and July 12, 2018. *Id.* at

155-59. These deficiencies included failing to complete ongoing projects in a timely manner, failing to properly address short term troubleshooting issues from customers, attempting to classify assignments as urgent and then delaying their completion, problems with customer interactions (including denial of responsibility and blame shifting to others), and informing customers and the supervisor that resolution was ongoing (when in fact Taylor was working on other, less urgent projects). *Id.*

In July 2018, SITS James contacted the Performance Appraisal Unit (PAU) regarding Taylor's performance deficiencies. *Id.* at 110. On September 19, 2018, a letter placing Taylor on a 90-day Performance Improvement Plan (PIP) was presented to Taylor listing these issues and laying out strategies to address them, but Taylor refused to sign it. *Id.* at 154, 162. Also on September 19, 2018, Taylor was presented with a reminder of the ITSU policy regarding her late arrival to work. *Id.* at 128. Taylor refused to sign that letter as well. *Id.*

The record shows detailed PIP Counseling Meeting notes were documented during the 90-day period by SITS James and ASAC Ballard. *Id.* at 179-202. At their first counseling meeting on September 26, 2018, Taylor was informed that she needed to adhere to department rules about being on time. *Id.* at 179. Throughout that meeting Taylor proceeded to act confrontationally with her supervisor and blamed her supervisor for various issues with Taylor's work, to the point where another individual in the meeting in told Taylor to watch her tone. *Id.* at 180. The second counseling meeting on October 3, 2018, focused on Taylor's lack of productivity and her problems with time management, including waiting until the end of her workday to ask for assistance on specific projects. *Id.* at 182. Also mentioned was Taylor's "consistent fabrication of events and inconsistencies". *Id.* at 183. The third counseling meeting on October 10, 2018 simply followed up on numerous tasks and reminders of upcoming assignments. *Id.* at 184.

In their fourth counseling meeting on October 18, 2018, SITS James indicated that Taylor was combative when asked to follow-up on several issues for ongoing projects. *Id.* at 185. James again noted that Taylor blamed her in what she characterizes as "an effort to deflect attention from herself and poor customer service." *Id.* at 187. This "confrontational and argumentative" behavior continued during the fifth counseling meeting on October 24, 2018, where even ASAC Ballard had to step in and inform Taylor that they were only there to address her current and future performance. *Id.* at 190-191.

After another meeting at the end of November, ASAC Ballard commented that "due to [Taylor's] statements, what could have been a positive exchange . . . was turned into an argumentative event, once again." *Id.* at 199. He stated that at this point, he believed Taylor was "failing this PIP, and failing miserably . . . The attitude she presents to us . . . is indicative of the complaints received by many other customers." *Id.* at 199-200. On December 19, 2018, a letter was provided to Taylor stating that her performance during the 90-day PIP Period had not improved and she remained at the Unacceptable level. *Id.* at 204.

On January 23, 2019, after the conclusion of the PIP 90-day period, SITS James drafted and submitted a document recommending Taylor's removal due to Taylor's failure to improve her performance during the PIP period. *Id.* at 204-18. The recommendation was approved by SAC Hammond, ASAC Ballard, and SITS James. *Id.* There were numerous specific instances discussed which led to Taylor's dismissal, including all of the following:

- failure to follow through troubleshooting computers when explicitly directed to do so, Agency's Exhibit A at 310;
- failure to accept feedback and placing blame for failures on others, *Id.*;
- failure to provide assistance with a Samsung backup despite being given clear instructions on how to do so, *Id.*;
- failure to create an email distribution group (a task which should have taken a week, but was still incomplete two months after assignment), *Id.*;

- failure to accurately assist users on more than one occasion, leading to the users solving the problems themselves (despite being counseled on how to better provide service to customers), *Id.* at 311;
- closed a work ticket twice despite not completing the assignment, and becoming argumentative when counseled about the issue, *Id.*;
- failure to act professionally on multiple occasions when being given feedback by her supervisor, to the point where brief reminders about performance turned into major arguments, *Id.*

The next week, Employment Development and Selection Program Section Chief Adam Eckblad signed a letter advising Taylor that she was being proposed for removal from her position due to her Unacceptable level of performance. FBI Investigative Rep. pp. 222-24.

On April 4, 2019, Taylor appeared before a Board, including Executive Assistant Director (EAD) Adam Vernick, for an oral appeal regarding her removal. *Id.* at 111. Executive Assistant Director Vernick signed Taylor's letter for removal due to her Unacceptable performance on April 8, 2019. *Id.* at 240. The removal letter stated that Taylor's oral and written appeals had been reviewed and considered prior to making a final decision to uphold the recommendation to remove Taylor from the rolls of the FBI. *Id.*

On February 26, 2020, the Reasonable Accommodation (RA) Program Coordinator searched the RA database for accepted and denied RA requests for years 2015-2018 and found no requests for reasonable accommodation from Taylor. *Id.* at 245; Agency Exhibit A at 312. No one in the record was aware that Taylor had a disability prior to the proposed removal appeal process. FBI Investigative Rep. pp. 96-123. EAD Vernick became aware Taylor had "lower back pain, headaches, pins and needles sensation" during the appeal process, but was unaware of whether Taylor had a disability. *Id.* at 121-22.

Another database search revealed that no other employees supervised by SITS James between September 19, 2017, and September 19, 2018, were placed on a PIP or proposed for dismissal except Taylor. *Id.* at 125-26. The search results show that of the employees directly

supervised by SITS James, five were males and seven were females, including Taylor. *Id.* The search resulted in only one male employee under forty years old; five employees, including Taylor, between forty and fifty; and five employees over fifty years old. *Id.*

Taylor filed an employment discrimination complaint with the Department of Justice on April 11, 2018, alleging discrimination because of pregnancy complications, and retaliation. DOJ Agency Decision p. 255. The final agency decision (released on February 25, 2020) determined that Taylor had no evidence to support her allegations and ruled against her. *Id.* at 251, 276-77. An appeal filed with the Equal Employment Opportunity Commission reached the same result. EEOC Decision 280-81. Taylor has now filed suit in this Court, alleging both disability discrimination on the basis of sex and retaliation.

II. STANDARD OF REVIEW

Under the Federal Rules of Civil Procedure, a court may grant summary judgment only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When considering whether there are genuine issues of material fact, the court must examine the evidence on the record in the light most favorable to the non-moving party and resolve inferences in their favor. *Stewart v. Rutgers, The State Univ.*, 120 F.3d 426, 431 (3d Cir. 1997) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)) However, "[t]he mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant].: *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, (1986).

III. ARGUMENT

Under the *McDonnell Douglas* burden shifting paradigm, the plaintiff has the initial burden to make a prima facie showing of discrimination, and if she does so, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employment action. *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973). If the defendant meets this burden, the presumption of discriminatory action raised by the prima facie case is rebutted. *Tex. Dep't. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254-55 (1981). However, the plaintiff must then be afforded an opportunity to show that the employer's stated reason for the employment action was pretextual. *McDonnell Douglas*, 411 U.S. at 804.

Each of Taylor's claims fail for one of three different reasons: Count I ¶ 30 and Count II ¶¶ 38-39 all are defeated by the FBI's showing of a legitimate business reason for termination; Count I ¶¶ 31-32 and Count II ¶ 39 are defeated because the FBI was unaware of any disability or accommodation requests made by Taylor; and Count I ¶ 32 is further defeated because the hostile environment did not rise to the level of severe and pervasive treatment required by Title VII and the ADA.

A. The FBI is Entitled to Summary Judgment by Showing a Legitimate Business Reason for Termination.

Taylor's claim of disability discrimination under the ADA (42 U.S.C. § 12101) requires Taylor to establish, by a preponderance of the evidence, a *prima facie* case that: "(1) she has a disability; (2) she is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) she was nonetheless terminated or otherwise prevented from performing the job." *Wishkin v. Potter*, 476 F.3d 180, 184-85 (3d Cir. 2007) (quoting *Shiring v. Runyon*, 90 F.3d 827, 830-31 (3d Cir. 1996)).

The FBI contends that there was a nondiscriminatory alternative reason for Taylor's dismissal that did not consider her status as a member of a protected class. The FBI has stated that the reason for Taylor's dismissal was ongoing poor job performance and a failure to improve her behavior as required by the implemented PIP, not any act of discrimination. *See* FBI Investigative Rep. p. 240.

The first reason that the FBI gives for Taylor's dismissal is regular unexcused absences and tardiness. *Id.* at 179; *see also Id.* at 128. Taylor would regularly be away from her desk and was difficult to locate even when she was present at work. *Id.* at 130. Tardiness was also a significant issue, with multiple warnings issued from her supervisor about being on time. *Id.* at 179. On one of the weeks at issue (week of 9/25/18) she was late three days in a row, including on the day of a PIP Counseling Meeting. *Id.*

Another reason for Taylor's dismissal is poor performance at basic job functions. Coworkers at the FBI indicated that they would go out of their way to avoid working with Taylor. *See Id.* at 130-31. Multiple complaints were filed that indicated Taylor was "slow to respond" and would offer excuses as to why she was "unable to resolve the issue". *Id*. She also regularly failed to meet mandatory deadlines on projects and complete routine assignments as requested, on dates including 9/27/2018, throughout October and November 2018, again specifically on 11/29/2018, and throughout December 2018. *Id.* at 208-11.

A third issue that the FBI presents is Taylor's insubordination. On several occasions Taylor had verbal altercations with her supervisor and was confrontational after being questioned about completing certain job-related duties. *Id.* at 180, 185, 187. 190-91, 99. These dates included 10/24/2018, 11/1/2018, and 11/29/2018. *Id.* at 214-16. Even during PIP counseling meetings which were intended to aid Taylor in improving her work, Taylor was

unprofessional and argumentative with both her direct supervisor as well as with other upper-level management. *Id.* at 216-17.

These issues all took place at least partially within the 90-day PIP window. Because of that, Taylor was on notice that these specific behaviors would not be tolerated in the workplace and she had the opportunity to change her behavior in response. *Id.* at 160. The PIP specifically stated that Taylor could be dismissed as a consequence of failing to improve her behavior within the 90-day time frame, *Id.*, which is what happened in January 2019 upon a recommendation from her direct supervisors.

Taylor was fired for her poor performance, not for her membership in a protected class. This significant amount of evidence and history of poor performance would also prevent Taylor from asserting that the FBI's legitimate reason is pretextual, as there is not even a "scintilla of evidence" which would support that conclusion. As such, the FBI is entitled to summary judgment on the claim of disability discrimination because Taylor is unable to rebut the former's legitimate nondiscriminatory reason for termination.

B. The FBI is Entitled to Summary Judgment Because There is No Evidence That Decisionmakers Knew About Taylor's Disability or Accommodation Requests.

Taylor alleges that her termination was retaliation by the FBI after her complaint requesting accommodation for her disability was submitted. Retaliation claims are cognizable under the ADA and follow the *McDonnell Douglas* burden shifting test. *Canada v. Samuel Grossi & Sons*, 49 F.4th 340, 346 (3d Cir. 2022); *Wishkin*, 476 F.3d at 185 (finding that the ADA serves the same purpose as Title VII, and therefore should also fall under the *McDonnell Douglas* framework).

Under the first step of that framework, Taylor "must establish a prima facie case by showing '(1) [that she engaged in] protected employee activity; (2) adverse action by the

employer either after or contemporaneous with the employee's protected activity; and (3) a causal connection between the employee's protected activity and the employer's adverse action.'" *Canada*, 49 F.4th at 346 (quoting *Daniels v. Sch. Dist. of Phila.*, 776 F.3d 181, 193 (3d Cir. 2015)). After making these showings, the employer then has the burden of producing evidence that "present[s] a legitimate, non-retaliatory reason for having taken the adverse action." *Id.* (quoting *Daniels*, 776 F.3d at 193). If the employer meets this burden, the burden then shifts "back to the plaintiff to demonstrate that 'the employer's proffered explanation was false, and that retaliation was the real reason for the adverse employment action.'" *Id.* (quoting *Moore v. City of Phila.*, 461 F.3d 331, 342 (3d Cir. 2006)).

The FBI maintains that there is no causal connection between Taylor's protected activity and her termination. However, for the sake of argument, even if Taylor could show the required elements of retaliation, the FBI proffers a non-discriminatory reason for Taylor's termination. This would shift the burden back to her, which means she must now show evidence that would allow a jury to reasonably "(1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious [retaliatory] reason was more likely than not a motivating or determinative cause of [the defendant's] action." *Daniels*, 776 F.3d at 198-99 (quoting *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994) (alteration in original)).

Taylor's retaliation claim should initially fail because her supervisors were unaware of her disability and any accommodations that arose from it. As indicated previously, Taylor would have to show that there was a causal connection between her protected activity and the FBI's adverse action. Here she cannot do so. Her firing was the result of unimproved poor job performance, which Taylor had the opportunity to correct over several months. FBI Investigative Rep. p. 240. There is no evidence on the record to suggest that Taylor's supervisors at the FBI were aware of her disability. In fact, these individuals all explicitly state

that they were unaware of the disability at the time Taylor was terminated. *Id.* at 96-123. Furthermore, there is nothing on the record that shows an accommodation was filed on Taylor's behalf. Even an extensive database search failed to locate any record of Taylor filing an accommodation request with the FBI during the period in question. *Id.* at 245.

Assuming Taylor can show a causal connection, the FBI contends that Taylor cannot present a triable issue of fact that its proffered explanation was false and that her firing was retaliation under the ADA. Nothing that Taylor has presented in her complaint rises to the level that would allow a jury to disbelieve the FBI's legitimate reasons. Indeed, both the DOJ agency review process and the EEOC ruling found that there was no evidence of discrimination in the present case. DOJ Agency Decision pp. 251, 276-77; EEOC Decision pp. 280-81. The former indicated that the only support for Taylor's claims of retaliation came from Taylor herself, and the amount of evidence supporting the FBI's reason for termination significantly outweighed those comments. DOJ Agency Decision pp. 276-77. Furthermore, the significant time gap between Taylor's return from maternity leave and her termination combined with the lack of knowledge of her disability both support the FBI's contention that the only reason for Taylor's termination was poor job performance in violation of the PIP.

C. The FBI is Entitled to Summary Judgment Because Taylor's Hostile Work Environment Claims Do Not Rise to the Necessary Level for Relief.

Taylor contends that she was subjected to a hostile work environment after she requested accommodations from the FBI. To establish a hostile work environment claim against the employer, a plaintiff must prove the following: (1) the employee suffered intentional discrimination because of their sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally

affect a reasonable person of the same sex in that position" *Huston v. Procter & Gamble Paper Prod. Corp.,* 568 F.3d 100, 104 (3d Cir. 2009) (citations omitted).

Moving past the question of whether Taylor suffered discrimination because of her pregnancy (and therefore based on her sex) as it is addressed above, there is no evidence on the record that suggests the behavior was pervasive enough to satisfy a hostile work environment claim. The complaints from colleagues that Taylor references do not make any mention of her gender or pregnancy. Instead, they focus on her poor performance at work and comment on how her inability to accomplish tasks affects them. *See* FBI Investigative Rep. pp. 130-31, 154-60.

Furthermore, even if these comments were addressing her disability, they would not be pervasive enough to constitute hostile work environment, as the record itself does not indicate any evidence suggesting they occurred often or severely enough to make such a claim. This Court should also be informed by a factually similar scenario in *Coia v. Vanguard,* in which the trial court determined that there were not any facts on the record that the plaintiff could point to that would be enough for a hostile work environment claim to survive summary judgment. 2017 U.S. Dist. LEXIS 25600 at *36 (E.D. Pa. Feb. 23, 2017). That case (like this one) involved an employee alleging a hostile work environment due to a supervisor's critical comments and general attitude towards the employee. *Id.* The court there held that there needed to be specific instances of severe or pervasive treatment for the claim to succeed, which did not exist. *Id.* Based on the lack of specific evidence of severe and pervasive treatment on the record, Taylor cannot make out a hostile work environment claim, and summary judgment should be granted to the defendant.

IV. CONCLUSION

Taylor cannot establish any genuine issue of material fact that would allow a jury to find in her favor. She cannot show that the FBI's legitimate nondiscriminatory reason for her termination was pretextual, and thus she fails on her discrimination claim under the ADA.

Taylor also fails to prove her retaliation claim. Not only is she unable to show that her supervisors were aware of her disability at the time of her termination, but she cannot provide any evidence beside her own statements that prove she filed an accommodation request at all. Even if she is able to show the existence of this accommodation request, Taylor fails to show a causal connection between the protected activity and the FBI's actions in terminating her.

Finally, Taylor cannot make out a cognizable claim for hostile work environment against the FBI due to a lack of evidence. Therefore, Taylor fails to present even a scintilla of evidence in support of her claims, and summary judgment should be granted to the FBI.

Dated:

Respectfully submitted,

United States Attorney

Chief, Civil Division

_____

Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(tel)
(fax)

Applicant Details

First Name	**Charles**
Last Name	**Woods**
Citizenship Status	**U. S. Citizen**
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Contact Phone Number	**3127834892**

Applicant Education

BA/BS From	**University of Chicago**
Date of BA/BS	**June 2017**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 21, 2023**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Rogers, Brishen
br553@georgetown.edu
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 6, 2023

The Honorable Chief Judge Juan Sánchez
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Courtroom 14-B

Dear Chief Judge Sánchez:

My name is Chase Woods, and I am a third-year student at Georgetown University Law Center. I am writing to apply for a clerkship in your chambers for the 2024-2025 term after I graduate this May and then spend one year as an Associate at the law firm Covington & Burling in Washington, D.C. I plan on pursuing litigation at the firm.

I am particularly interested in working in your chambers for several reasons. First, I believe that we both share a strong commitment to public service. For as long as I can remember, I have felt most like myself while in service to others. This was true when I spent summers in high school and college working as a camp counselor for young adults with mental and physical disabilities; when I quit my first job as a consultant to go work on Capitol Hill as a special assistant and legislative aide to U.S. Senator Michael F. Bennet; after coming to law school, when I worked on complex legal issues on behalf of indigent clients as a summer Law Clerk at the Federal Public Defender for the District of Maryland; and, last semester, when I helped author two appellate briefs in Georgetown's Appellate Courts Immersion Clinic.

Second, working in your chambers would offer me the chance to stay on the East Coast and give back to a region and people who have already given me so much. After spending the last six years of my life in and around Washington, I have taken to this side of the country. I am a sucker for riding up and down the Amtrak to other cities and towns and am also a recent convert to the Philadelphia Eagles. Go Birds.

Lastly, I was encouraged to apply for a clerkship in your chambers by Judge Thomas Hardiman after I took his First and Second Amendments seminar at Georgetown last winter. He convinced me that the chance to work under you would be an invaluable experience.

I have enclosed my resume, a copy of my unofficial transcript, and a writing sample. Letters of recommendation are attached from the following:

- Professor Brishen Rogers, Georgetown University Law Center
- Professor Brian Wolfman, Georgetown University Law Center

It would be a tremendous honor to work in your chambers. Not only would the complex nature of the work fulfill my intellectual curiosity, but the opportunity to follow and help clarify the law deeply aligns with my personal commitment to service. Regardless of the outcome of this process, I truly appreciate your consideration.

Sincerely,
Chase Woods

Record of: Charles A. Woods, III
GUID: 814890541

Course Level: Juris Doctor

Degrees Awarded:
Juris Doctor Jun 07, 2023
Georgetown University Law Center
Major: Law

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	31	Legal Process and Society Nan Hunter	4.00	A	16.00	
LAWJ	002	31	Bargain, Exchange, and Liability David Super	6.00	B+	19.98	
LAWJ	005	30	Legal Practice: Writing and Analysis Michael Cedrone	2.00	IP	0.00	
LAWJ	009	32	Legal Justice Seminar K-Sue Park	3.00	A	12.00	

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	47.98	3.69
Cumulative	13.00	13.00	47.98	3.69

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	003	93	Democracy and Coercion Allegra McLeod	5.00	B+	16.65	
LAWJ	005	30	Legal Practice: Writing and Analysis Michael Cedrone	4.00	B+	13.32	
LAWJ	007	32	Property in Time Daniel Ernst	4.00	B	12.00	
LAWJ	008	32	Government Processes Glen Nager	4.00	B+	13.32	
LAWJ	611	20	Advocacy, Client Counseling and Negotiation Skills in Practice Settings Sheldon Krantz	1.00	P	0.00	

	EHrs	QHrs	QPts	GPA
Current	18.00	17.00	55.29	3.25
Annual	31.00	30.00	103.27	3.44
Cumulative	31.00	30.00	103.27	3.44

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	052	05	Fourteenth Amendment Seminar Louis Seidman	3.00	A	12.00	
LAWJ	195	05	Election Law: Voting, Campaigning and the Law Paul Smith	3.00	P	0.00	
LAWJ	264	05	Labor Law: Union Organizing, Collective Bargaining, and Unfair Labor Practices Brishen Rogers	3.00	A	12.00	

	EHrs	QHrs	QPts	GPA
Current	9.00	6.00	24.00	4.00
Cumulative	40.00	36.00	127.27	3.54

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	131	05	Disability Discrimination Law Allison Nichol	3.00	C	6.00	
LAWJ	1769	05	Law and Political Economy Seminar Brishen Rogers	3.00	A	12.00	
LAWJ	178	05	Federal Courts and the Federal System David Vladeck	3.00	A-	11.01	
LAWJ	586	05	Race and American Law Sheryll Cashin	4.00	A-	14.68	

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	43.69	3.36
Annual	22.00	19.00	67.69	3.56
Cumulative	53.00	49.00	170.96	3.49

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	121	02	Corporations Robert Thompson	4.00	B	12.00	
LAWJ	165	05	Evidence Michael Gottesman	4.00	B	12.00	
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties Gary Peller	4.00	B+	13.32	
LAWJ	263	09	Employment Law Brishen Rogers	3.00	A-	11.01	
LAWJ	361	09	Professional Responsibility Philip Sechler	2.00	B+	6.66	

	EHrs	QHrs	QPts	GPA
Current	17.00	17.00	54.99	3.23
Cumulative	70.00	66.00	225.95	3.42

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	049	05	Appellate Courts and Advocacy Workshop	2.00	B+	6.66	
LAWJ	1538	05	Constitutional Law: The First and Second Amendments Thomas Hardiman	1.00	P	0.00	
LAWJ	504	05	Appellate Courts Immersion Clinic		NG		
LAWJ	504	30	~Writing	4.00	A-	14.68	
LAWJ	504	80	~Research and Analysis	4.00	A-	14.68	
LAWJ	504	81	~Advocacy & Client Relations	4.00	B+	13.32	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	15.00	14.00	49.34	3.52
Annual	32.00	31.00	104.33	3.37
Cumulative	85.00	80.00	275.29	3.44

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 03, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend Chase Woods strongly for a clerkship in your chambers. Chase took three of my classes during his time at Georgetown University Law Center: Labor Law, Employment Law, and my seminar in Law and Political Economy. Given his interest in the subject matter of those classes, he also sought my advice outside of class several times. Based on our interactions both inside and outside of class, I feel I have gotten to know him quite well.

Chase's work in my Law and Political Economy seminar was outstanding. He was consistently one of the best prepared and most insightful students, and was especially skilled at integrating issues of economic inequality and racial injustice into our discussions. His final paper built on his mother's experiences as an emergency room nurse and a hospice nurse to ask why labor such as hers, which is quite socially valuable, is often poorly compensated. The paper drew together the history of homecare work and other forms of marginalized work, the role of race and gender in shaping those labor markets, and the legal treatment of such work by Congress and the courts. It was one of the best in the class, and Chase earned an A overall.

Chase's work in my doctrinal classes was equally strong. He frequently volunteered to discuss cases and demonstrated a strong capacity both to understand and synthesize doctrine, and to place it in social context. He was often one of the few students able to answer difficult questions that I posed to the class. In fact, on several occasions when other students were struggling to make sense of an ambiguity in the doctrine, Chase would volunteer, state that ambiguity and its import, and help others to make sense of it. In Labor Law he earned an A, with an exam that was the best in the class. In Employment Law he earned an A-, again with a very strong exam. Chase's writing and legal analysis were extremely strong on both exams. Given his class performance, I was not surprised by either grade.

Through our meetings outside of class it has also become clear to me that Chase has a deep commitment to service and to social justice. He was active in student organizing while earning his B.A. at the University of Chicago then spent several years working on Capitol Hill after graduation. At Georgetown he has been active in the Student Bar Association and the Black Law Students Association. Finally, as you'll see if you have the chance to meet, Chase is a student of uncommon maturity and poise, with very strong interpersonal skills. He can connect with others from a wide range of backgrounds, and has clear leadership abilities. I believe he has a very bright future ahead of him as a lawyer and advocate, and I will not hesitate to recommend him highly to legal employers in the future.

Please do not hesitate to reach out if I can be of any further assistance.

Sincerely,

Brishen Rogers
Professor of Law

GEORGETOWN LAW

Brian Wolfman
Professor from Practice
Director, Appellate Courts Immersion Clinic

May 29, 2023

Re: Clerkship recommendation for **Charles (Chase) Woods**

I recommend Charles (Chase) Woods for a clerkship in your chambers.

Chase was a student-lawyer in the Appellate Courts Immersion Clinic at Georgetown University Law Center in the spring semester of 2023. (I am the clinic's director.) The clinic handles complex appeals in the federal courts of appeals and in the U.S. Supreme Court. Students act as the principal lawyers researching and writing briefs under my supervision.

The clinic operates full-time. Students take no classes other than the clinic and a co-requisite seminar about the law of the appellate courts. I worked with Chase nearly daily for an entire semester and observed him as a judge would observe a law clerk or as a senior lawyer might observe an associate. This letter, therefore, is based not on one exam, a handful of comments in class, or even a few meetings, but on an intensive working relationship.

I'll start with my bottom line: Chase would be an excellent law clerk. He writes well and, when appropriate, with punch. His legal analysis is generally strong. He thinks strategically and has a nose for separating what matters in litigation from what does not.

Chase worked on two challenging appellate litigation projects: a combination opening and reply cross-appeal brief in an employment-discrimination case and a reply brief in a Section 1983 appeal arguing that a jail guard's unconstitutional delay in providing medical care exacerbated our client's suffering and led to his death. I was Chase's day-to-day supervisor on the second

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matter, so I'll concentrate on it. Chase was asked to respond to the jail officer's claim that his delay, even if negligent, was not "objectively unreasonable"—the constitutional standard for imposing liability. This task would have been difficult for most experienced lawyers, let alone a third-year law student. Chase was required, first, to master a large summary-judgment record, including a dozen depositions, an autopsy report, and other records. He then had to survey the case law, both in and out of circuit, about what constitutes an objectively unreasonable delay in providing medical care—in this case, a failure to immediately send CPR-trained officers to try to save an inmate struggling to breathe. And then, most importantly, Chase had to take his understanding of the record and case law, and turn it in to a cogent, persuasive argument. Working with another student, Chase handled these tasks well. Chase's work stood out in particular when it came to finding underlying themes in the law and translating theme into a compelling narrative. Chase is well on his way to becoming a fine legal writer.

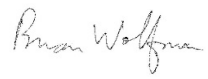
Chase also did well in the co-requisite seminar. Much of the seminar is an intensive review of basic federal appellate-courts doctrine, including the various bases for appellate jurisdiction, standards of review, and issue preservation. The students must master the difficult material and apply it in a half dozen challenging writing assignments. We also take a short detour into Supreme Court jurisdiction and practice. Only capable students who are willing to work hard do well in this course. Given the course's subject matter and its blend of doctrine, writing, and practice, the course often appeals to students who desire federal clerkships (particularly federal appellate clerkships). Chase received a "B+" in the class. That's not a bad grade, but it requires some explanation. Chase did not complete one of the exercises (and so received a zero for it). His work was otherwise consistently good on the other assignments, and, if not for the missed assignment, he would have received an "A-"—a fine grade in a class populated by high achievers.

* * *

Beyond his legal ability, Chase has other positive attributes. He works well in groups. He is outgoing and personable and has a keen sense of humor. He's just fun to be around. For these reasons, I believe he would be an excellent colleague in chambers.

To end where I began: I recommend Chase Woods for a clerkship. If you would like further information, please call me at 202-661-6582.

Sincerely,



Brian Wolfman

RACE, GENDER, AND THE PUBLIC WORKPLACE

CAPITALISM'S INFLUENCE ON THE HOME HEALTH CARE INDUSTY AND THE LABOR RIGHTS OF HOME HEALTH CARE WORKERS

By: Chase Woods

"What white people have to do is try to find out in their hearts why it was necessary for them to have a nigger in the first place. Because I am not a nigger. I'm a man. *If I'm not the nigger here, and if you invented him, you the white people invented him, then you have to find out why. And the future of the country depends on that.*"

- James Baldwin, *The Negro and the American Promise*

"That man over there says that women need to be helped into carriages, and lifted over ditches, and to have the best place everywhere. Nobody ever helps me into carriages, or over mud-puddles, or gives me any best place! And ain't I a woman? Look at me! Look at my arm! I have ploughed and planted, and gathered into barns, and no man could head me! And ain't I a woman? I could work as much and eat as much as a man - when I could get it - and bear the lash as well! And ain't I a woman? I have borne thirteen children, and seen most all sold off to slavery, and when I cried out with my mother's grief, none but Jesus heard me! And ain't I a woman?"

- Sojourner Truth, *Ain't I A Woman?*

Introduction

My earliest understanding of labor is deeply influenced by the work of my mother. As an emergency room nurse in Chicago, she spent her nights taking care of people who had fallen victim to tragedy or circumstance sometime between sundown and sunrise. The work itself was demanding, stressful, and both physically and mentally taxing. Somehow, after a full night's work, she would drive home to prepare my younger brother and I for school before returning to catch a few hours of sleep. Then, she would pick us up from school, cook dinner, and head back to the hospital. Rinse and repeat, day after day. From the vantage point of an eleven-year-old, this all seemed fairly normal; on some level, it was, given the fact that nearly a quarter of the children growing up in the United States live in single-parent households.[1] That said, the point is that I first understood work to be *difficult*. Work was long, and it was supposed to leave you physically tired. Work was tethered to seemingly everything else in your life; your labor supported you, your leisure, and your family.

Only as I grew older did I see another side of my mother's work. By the time I entered high school, she had transitioned from working in an emergency room to working as a home hospice nurse, taking care of patients as they were close to death. In that role, I saw the intimacy in her labor. At dinner she would share the personal details of her patients' lives: how old their children were, what they did for work, how they spent their time before their diagnoses and eventual declines. I learned that many of her responsibilities were those intimate acts that we typically expect of family. She would monitor and administer their medications and treatments. She washed and changed her patients and would be there when they cried out in pain. She would reassure them in those moments when that heavy realization would strike them: that those were some of their last moments alive.

She performed these same tasks for her own parents in the twilight of their lives. While she was able to take time away from work to take care of her father before his passing, she had to rely on the help of several home health care aides when her mother's health took a turn for the worst. Each of these workers—a dark-skinned, immigrant woman—helped my mother with these intimate acts, bathing, feeding, and changing a woman who used to run a household of seven. It is odd to think that these strangers stepped into one of the most vulnerable moments of our lives only to never be seen by us again. Recently, I have found myself thinking back on those moments with greater frequency as I have gotten older and come to understand more about the dynamics of home care. This labor is often both physically and emotionally demanding; workers must care for both a patient's body and all its ailments, while also navigating the intimacies and emotional difficulties of caring for another human being. Despite the intensity of this work, it is often woefully undercompensated, and workers are not extended the same legal protections as other professions. The discrepancy between the importance of this work and how it is valued by society is something I have wanted to explore for some time.

This essay seeks to investigate that discrepancy, and, more specifically, to understand what fuels capitalism's influence in the home health care industry. These questions will be answered by contextualizing contemporary theories of capitalism in the history of home health care and legal decisions that have affirmed the underlying logic, beliefs, and tenets of the market. First, I will lay out an analytical framework rooted in Law and Political Economy (LPE) to

[1] Stephanie Kramer, *U.S. Has World's Highest Rate of Children Living in Single-Parent Households*, Pew Research Center, https://www.pewresearch.org/fact-tank/2019/12/12/u-s-children-more-likely-than-children-in-other-countries-to-live-with-just-one-parent/ (last visited May 15, 2022).

discuss the interplay between capitalism and the law. This will provide a toolkit to later address capitalism's specific impact on home health care. The ideas and theories of scholars such as Gabriel Winant, Peggie R. Smith, Kimberlé Williams Crenshaw, Destin Jenkins and Justin Leroy, Joseph Schumpeter, Jedidiah Britton-Purdy, David Singh Grewal, Amy Kapcynski, and K. Sabell Rahman will be discussed to establish a vocabulary that will be used throughout this paper. Second, I will briefly touch on the history of reproductive labor and home health care, and their shared origins in exploited, racialized work that was sanctioned by local, state, and federal policies. Third, I will summarize *Harris v. Quinn*[2], a Supreme Court decision that concerned the rights of home health workers under the employ of the state of Illinois. Lastly, I will explain capitalism's impact on the home health care industry and demonstrate how it exploits social hierarchies to achieve its ends; at the same time, I will highlight how the law sanctions these attitudes by exploring Justice Alito's majority opinion in *Harris v. Quinn.*[3]

In short, capitalism relies on the exploitation of poor, Black and brown women—largely, but not exclusively, immigrant women—to produce profits in the home health care space. This system of exploitation is codified by law and relies on various social constructions, such as gender and race, to justify its own existence. Capitalism necessitates the creation of a social "other" that will be coerced into providing free or cheap labor for the ruling class.[4] This "other" remains subordinated through a series of negative stereotypes and social doctrine that justify their exploitation.[5] Gender and racial stereotypes are used to undervalue and devalue home health care and other forms of reproductive labor. This labor is often diminished as "women's work", distinct from traditional forms of productive labor because it is largely performed by women who are expected to do so out of a sense of obligation to family. Furthermore, this work is often discredited as "unskilled" labor and best performed by "docile", "subordinate" women of color, "incapable of governing their own lives."[6] The law consistently reflects and sanctions these attitudes by withholding certain rights and legal entitlements from these workers by relying on the same stereotypes used to rationalize their exploitation under capitalism.

Law and Political Economy Framework

This section is meant to provide an intellectual framework through which I will analyze the history of the home health care industry and the legal decisions that have influenced and continue to influence the rights and entitlements of its workers. Specifically, this paper sets out to utilize the Law and Political Economy approach, a burgeoning field of study that draws upon key insights from the Legal Realists, Critical Legal theorists, and other legal disciplines. While rooted in these longstanding theories, Law and Political Economy can be thought of as a counterargument to the contemporary political and economic order. Whereas the current order largely treats the economic and political as distinct realms, Law and Political Economy

[2] *Harris v. Quinn*, 573 U.S. 616 (2014).
[3] *Id.*
[4] Destin Jenkins and Justin Leroy, *Introduction: The Old History of Capitalism*, in Jenkins and Leroy, eds., HISTORIES OF RACIAL CAPITALISM (2021).
[5] Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).
[6] Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor*, https://www.jstor.org/stable/3174725?seq=1.

"investigates the relation of politics to the economy, understanding that the economy is always already political in both its origins and its consequences."[7]

LPE scholars believe that law is essential in solidifying and perpetuating the structural inequalities birthed by the market.[8] Scholars whose work predates LPE have noted that the law has been essential to the development of capitalism itself. As illustrated by Max Weber, the emergence of Europe's largely uniform and predictable legal system helped to bring about the advent of industrial capitalism.[9] European law provided the social control that would be necessary to further capitalist goals; for instance, this western conception of law ensured the calculability of outcomes that capitalists required to maximize output and profits and it produced the "substantive provisions" to effectuate the market system.[10] The capitalist that sits atop the market system cannot hope or depend on a general sense that a worker will perform his duties. Instead, the capitalist:

> must know exactly what and when, and he must be highly certain that the precise performance will be forthcoming. He wants to be able to predict with certainty that other units will perform. But given the potential conflict between their self-interests and their obligations, he also wants to predict with certainty that coercion will be applied to the recalcitrant. The predictability of performance is intimately linked to the certainty that coercive instruments can be invoked in the event of nonperformance."[11]

Capitalism is defined by its capacity for reinvention and growth. It requires a constant, perpetual churn in order to reach new frontiers of profit. For instance, the Austrian-born economist Joseph Schumpeter developed the concept of "creative destruction" to describe capitalism's nature: it describes the "process of industrial mutation that continuously revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one."[12] Capitalism is fueled by new markets and new products, and it will destroy old markets and old products to clear space for growth. This change primarily occurs through technological innovations that provide short-term market advantages for some, and through manipulation of "social relations including suppression of workers' class-based power."[13] This cycle is necessitated by capitalism's promise of exponential growth. Under this system, actors are promised and expected to pursue endless wealth through the tactics mentioned above.[14] The capitalist's pursuit of growth comes at the expense of both his fellow man and the long-term survival of capitalism itself. The market makes competitors out of all its actors and creates "a social license for actors to try to improve their position at the expense of others. A

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[7] Jedediah Britton-Purdy, David Singh Grewal, Amy Kapcynski & K. Sabeel Rahman, *Building a Law-and-Political Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1792 (2020).
[8] Angela Harris & James J. Varellas, *Law and Political Economy in a Time of Accelerating Crises*, 1 J.L. & POL. ECON. 1, 10 (2020).
[9] David Trubek, Max Weber on Law and the Rise of Capitalism, 1972 WISC. L. REV. 720 (1972).
[10] *Id.* at 740.
[11] *Id.* at 742-743.
[12] *Creative Destruction*, Wikipedia (Apr. 12, 2022), https://en.wikipedia.org/wiki/Creative_destruction (hereinafter *Creative Destruction*).
[13] Brishen Rogers, *Capitalist Development, Labor Law, and the New Working Class*, 131 YALE L.J. 1842, 1858 (2021).
[14] Wolfgang Streeck, *Taking Capitalism Seriously: Towards an Institutionalist Approach to Contemporary Political Economy*, 9 SOCIO-ECON. REV. 137, 148 (2011).

license to compete implies a license to behave in a way that is the opposite of solidarity."[15] Additionally, as the capitalist acquires more wealth through ruthless competition, he has less incentive to behave in ways that engender stability in the market. He can quite literally afford to disregard the system that produced his wealth because he has become insulated to the consequences of his own recklessness.[16]

Furthermore, Law and Political Economy recognizes that the class power that allows capitalists to subjugate workers "is inextricably connected to the development of racial and gender hierarchies, as well as to other systems of unequal power and privilege."[17] Indeed, racial classifications have been critical to the development of capitalism and racism has been a driving force in legitimating and sustaining class hierarchies. Capitalism's origins can be traced back to feudal society where religious, ethnic, and national divisions were exploited and "amplified" in service of wealth accumulation.[18] As an outgrowth of this system, the Atlantic slave trade utilized "race making" to further capitalist development and to draw a clear, demarcating line between Black labor and the ruling, capitalist class of Western Europe.[19] Furthermore, these racial divisions "serve[d] as a tool for naturalizing the inequalities produced by capitalism, and this racialized process of naturalization serves to rationalize the unequal distribution of resources, social power, rights, and privileges."[20] The racialized aspect of capitalism evades temporal constraints and continues today.[21]

Throughout modern history, the law has worked to sanction and legalize racial difference, both explicitly and implicitly. Law codifies beliefs, assumptions, and prejudices into enforceable codes that are continuously deployed between and against individuals. People, "[by] accepting the bounds of law and ordering their lives according to its categories and relations…think that they are confining reality–the way things must be."[22] In other words, law has a legitimating effect on the ordering of society. In American society, racism is a key tool used to legitimate and maintain racial hierarchies. Through a series of stereotypes and assumptions, viewed through the lens of a dominant, white majority, the legal subjugation of Black people seems "logical and natural."[23] This racial difference—the creation of a racialized other—also helps to reinforce identification with the dominant group.[24] By associating normatively positive traits with the white majority and normatively negative traits with subordinated black group, "a bond, a burgeoning common identity of all non-stigmatized parties–whose identity and interests are defined in opposition to the other" is formed.[25]

In short, the key insight of Law and Political Economy is that the economic and political realms are *not* distinct; in fact, the two are in perpetual dialogue with one another, reinforcing and reifying the existing social order. Over the last several centuries, in the United States and the Global West, more generally, the law and the market have worked together to cement capitalism as the hegemonic force that guides our daily lives. Capitalism is relentless in its demands for new

[15] *Id.* at 151.
[16] *Id.* at 150.
[17] Harris and Verallas, *supra* note 7, at 10.
[18] Leroy and Jenkins, *supra* note 3, at 5.
[19] *Id.* at 6.
[20] *Id.* at 3.
[21] *Id.* at 12.
[22] Crenshaw, *supra* note 4, 1352.
[23] *Id.* at 1372.
[24] *Id.*
[25] *Id.* at 1373-1374.

markets and never-ending profits. It incentivizes individuals to behave in ways that degrade the worth and devalue the labor of their fellow human beings, whether that is through technological innovation or wage suppression or other tactics that undermine workers. Capitalism even incentivizes individuals to behave in ways that undermine its own long-term success. This system is propped up by the exploitation of racial difference. Racism is used to legitimate and rationalize the subjugation of Black and brown workers who have been legally stationed on the bottom of capitalism's hierarchy. Their subjugation—and other forms of violence that are crucial to capitalist success—is accepted because the law sanctions and gives effect to the beliefs, behaviors, and actions that facilitate capitalism's never-ending plunder.

History of Home Care

The story of reproductive labor, generally, and home health care, specifically, in the United States is a story of capitalism's increasing influence in deeply personal domains, such as the family and the home, and the gendered and racialized hierarchies that facilitated its expansion. Reproductive labor—labor that maintains and spurs human life, such as preparing food, cleaning, and maintaining a home, watching, and raising children, looking after elderly and other dependent family members, managing a family's social calendar, etc.—has historically been performed by women.[26] However, prior to the advent of modern capitalism, women's work was not exclusively reproductive in nature. Prior to industrialization, both reproductive and productive labor were "organized almost exclusively at the household level," and women "were simultaneously engaged in the production of foodstuffs, clothing, shoes, candles, soaps, and other goods consumed by the household."[27] It was only as capitalism began to commodify good production on a larger scale that women's work became increasingly focused on reproductive labor, while men pursued productive labor outside of the home. That said, this development was not felt evenly across racial and class lines. For working class families composed of racial and ethnic minorities, "men seldom earned a family wage…women and children were forced into income-earning activities in and out of the home."[28]

In the nineteenth century, as industrialization swept across the country, the responsibilities of middle-class women expanded and clarified, and they became increasingly responsible for more and more physically demanding housework. "Rising standards of cleanliness, larger and more ornately furnished homes, the sentimentalization of the home as a 'haven in a heartless world'…and the new emphasis on childhood and the mother's role in nurturing children" all helped to increase the number of reproductive tasks that were expected of middle-class women.[29] In response to an increasing reproductive workload, middle-class women sought to "slough off the more burdensome tasks onto more oppressed groups of women."[30] It would soon become common for these women to employ women of color and immigrant women to perform many of their daily household tasks, like laundering clothes, scrubbing floors, and looking after children. This arrangement freed middle-class white women from having to perform the more cumbersome domestic duties and freed them to pursue other interests and leisure activities. At the same time, this arrangement helped to resolve a tension that existed

[26] Glenn, *supra* note 5, at 1.
[27] *Id*.
[28] *Id*. at 4-5.
[29] *Id*. at 7.
[30] *Id*.

between cultural expectations of women (the virtuous woman was expected to deny her physical body, to refrain from appearing "dirty", and maintaining a level of refinement) and what was demanded from them as mothers and wives.[31] Transferring the reproductive responsibilities onto racial and ethnic minority women allowed middle-class white women to signal their virtue and character while simultaneously branding the women under their employ as socially and culturally inferior.

Throughout the 1920's, reproductive labor was increasingly performed by poor, women of color. As Glenn notes, there is "considerable evidence that middle-class whites acted to ensure the domestic labor supply by tracking racial-ethnic women into domestic service and blocking their entry into other fields."[32] They did so by denying women of color other professional opportunities, and using instruments of social control and development, such as school curriculums, to shuttle and train youth to perform domestic service jobs. In the Southwest, Latina students were tracked into homemaking classes that would prepare them for domestic service.[33] In El Paso's segregated school system, Latina students were taught manual and domestic skills that would prepare them for a life of service.[34] In Hawaii, prior to World War II, Japanese and Chinese women were often coerced to work for their husbands' or father's employers.[35] Not infrequently, some of them were prevented from pursuing a high school or college education to fill domestic roles.[36] Women of color routinely faced institutional hurdles so that they could fill the middle-class' need for outsourced reproductive labor.

This dynamic—poor women of color coming under the employ of white middle-class families to provide reproductive labor—would become increasingly formalized in the years to come. During the Great Depression, the federal government would take an active role in this arrangement. As noted by legal historians Eileen Boris and Jennifer Klein:

> The New Deal employed what at the time were called visiting homemakers directly through the Works Progress Administration (WPA) to help poor families and individuals with medical emergencies, chronic illness, and health problems surrounding old age, while curtailing the costs of institutionalization. The WPA also initiated programs to move such people out of hospitals and give them the necessary assistance to become 'independent' at home.[37]

Latina and Black people were directed to domestic service work exclusively.[38] Race is a key element to the development and modern expansion of the reproductive labor and home health care spaces. Specifically, a number of racial stereotypes were deployed against poor, women of color to justify their exclusion from work that has been socially and legally valued and to redirect them towards demanding, often thankless jobs like home health care. Glenn writes:

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[31] *Id*. at 8.
[32] *Id*. at 11.
[33] *Id*.
[34] *Id*. at 12.
[35] *Id*.
[36] *Id*.
[37] Eileen Boris and Jennifer Klein, *Valuing Domestic Work: Organizing Home Care*, The Scholar & Feminist Online—Barnard Center for Research on Women, Issue 8.1 (2009), https://sfonline.barnard.edu/work/klein_boris_01.htm, accessed April 13, 2022.
[38] Glenn, *supra* note 5, at 13.

> The dominant group ideology in all these cases was that women of color–African American women, Chicanas, and Japanese American women–were particularly suited for service. These racial justifications ranged from the argument that Black and Mexican women were incapable of governing their own lives and thus were dependent on whites–making white employment of them an act of benevolence–to the argument that Asian servants were naturally quiet, subordinate, and accustomed to a lower standard of living. Whatever the specific content of the racial characterizations, it defined the proper place of these groups as in service: they belonged there, just as it was the dominant group's place to be served.[39]

As domestic and home health care labor became an increasingly formalized occupation, the federal government chose to exclude this type of work from key labor protections and benefits. During this time, the Democratic Congress would go on to pass landmark worker-focused legislation providing workers the right to collectively bargain, setting a federal minimum wage, and establishing unemployment benefits and old-age insurance. However, domestic workers such as nurses' aides, homemakers, and in-home workers were excluded from coverage and enjoyment of these rights and benefits.[40] Once again, race was the decisive factor in determining who did and did not qualify for these protections and entitlements. Southern Democrats threatened to withhold their support from any New Deal program that threatened "the separate southern labor market and its distinctive melding of class and caste relations, its racial segmentation, and its low wages."[41] Federal legislation to establish old-age and unemployment insurance ceded administrative responsibilities to local authorities, and national standards for these programs were dropped.[42] Agricultural and domestic workers were excluded from unemployment insurance programs.[43] Consequently, the majority of Black Americans who worked in these occupations were excluded from key economic protections.[44] These same accommodations to Jim Crow would motivate Congress to exclude agricultural and domestic workers from the protections of the 1935 National Labor Relations Act.[45] Despite these legal exclusions, the federal government would continue to push poor women of color into the home care space as its role in the administration of health care to vulnerable dependents continued to expand. President Lyndon Johnson's Great Society launched initiatives that built upon existing home health care infrastructure through programs like Medicare and Medicaid that provided care for the elderly and the poor, respectively. Just as the WAP funneled poor, women of color into home health care services, "War on Poverty training programs sought to channel poor women into these jobs. Recruited from families on public assistance, homemakers cared for others from the same social class."[46]

Today, the home health care industry has continued to become racially stratified and, increasingly, defined by immigration status. In 2014, nearly 60 percent of home health care

[39] *Id*. at 14.
[40] Boris and Klein, *supra* note 36.
[41] William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 Mich. L. Rev. 1, 76-77 (1999).
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *Id*. at 81.
[46] Boris and Klein, *supra* note 36.

workers were women of color, and nearly a quarter were born outside of the United States.[47] Indeed, "as domestic service has become globalized, women working in the field have increasingly left their own homes and migrated to wealthier countries."[48] Women from Central and South America routinely migrate to the United States in search for work in domestic services, including home health care.[49] The same is true for poor women from countries across Eastern Europe and economically developing Asian nations like the Philippines.[50] Just as many responsibilities tied to reproductive labor were transferred from white, middle-class women to poor, women of color in the twentieth century, today we are experiencing a similar shift from "the [global] South to the North that is influenced by racial, class, and national differences."[51] Local economies throughout the United States that have historically been powered by the white, male working class are now primarily driven by Black and brown, female health care workers.[52]

Because of the lack of labor protections afforded to these workers, many of these laborers find themselves trapped in difficult working conditions and a vicious cycle of economic exploitation. Domestic workers typically work long hours for little pay, and do not receive benefits such as maternity leave or access to health care.[53] According to the United States Bureau of Labor Statistics, the median salary from home health and personal care aides in 2020 was roughly $27,080.[54] In 2014, it was estimated that over half of home health care workers in the United States relied on some form of public assistance and that roughly a quarter were uninsured.[55] Working conditions can also be especially difficult. Home health care workers "are also routinely subjected to harsh working conditions including abuse and discrimination, exposure to health and safety hazards, inadequate accommodations for live-in work, and excessive hours."[56] The federal government has officially noted both the emotional and physical toll of the work.[57]

Lastly, the modern home health care industry is defined by several trends, including a steady increase in the size of its workforce, public dollars financing the vast majority of the field's labor, and a burgeoning gap between the number of adults in need of care and the number of workers able to provide that care. Between 2005 and 2015, the home health care workforce doubled in size from 700,000 to 1.4 million workers.[58] If independent providers (or independent professionals that provide the same services as home health aides but are typically employed through Medicaid programs that offer consumer-directed services) were to be included in this count, then there were approximately 2.2 million home care workers in the United States in

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[47] PHI, *U.S. Home Care Workers: Key Facts*, https://www.phinational.org/wp-content/uploads/legacy/phi-home-care-workers-key-facts.pdf (2019), 4, [hereinafter *Key Facts*], accessed April 13, 2022.
[48] Peggie R. Smith, *Work like any Other, Work Like No Other: Establishing Decent Work for Domestic Service Workers*, 15 Employee Rights & Employment Policy Journal 159, 161 (2011).
[49] *Id*. at 162.
[50] *Id*.
[51] *Id*. at 163.
[52] Gabriel Winant, *A Place to Die: Nursing Home Abuse and the Political Economy of the 1970s*, 105 JOURNAL OF AMERICAN HISTORY 96, (2018).
[53] *Id*. at 159.
[54] *Home Health and Personal Care Aides*, U.S. Bureau of Labor Statistics, https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm (2020), [hereinafter Labor Report] accessed April 13, 2022.
[55] *Key Facts*, *supra* note 46, at 6.
[56] Smith, *supra* note 47, at 159.
[57] Labor Report, *supra* note 52.
[58] *Key Facts*, *supra* note 46, at 4.

2015.[59] In 2020, the U.S. Bureau of Labor Statistics estimated that there were 3,470,700 home health workers in the United States and the agency expects there to be a 33 percent increase in the total size in the workforce by 2030 (or roughly 4.6 million workers).[60] This field has exploded as other professions, particularly those throughout the industrial Midwest, have declined.[61] In this way, the wealth attached to one market has shifted from one industry to another.[62] Most of this work is subsidized by government funding. The home health care industry generated $71 billion in revenue in 2014, and approximately 72 percent of that sum was paid for by public programs, primarily Medicare and Medicaid.[63] There is little reason to believe this dynamic will change, especially considering that the number of older adults is expected to almost double by 2050, from 47.8 million to 88 million.[64] At the same time, the number of working adults is expected to remain stagnate. The government will likely need to take a more active role in the financing of home health care to meet the growing demand for these services.

Harris v. Quinn

In 2014, the Supreme Court heard oral arguments in *Harris v. Quinn*.[65] The Court sought to answer the question of whether "the First Amendment permits a State to compel personal care providers to subsidize speech on matters of public concern by a union that they do not wish to join or support."[66] The District Court dismissed the claims of the home health care workers that brought the suit, and the Seventh Circuit affirmed in relevant part, "concluding that the [workers] were state employees within the meaning of [precedent]."[67] In a 5-4 decision, it was held that the First Amendment prohibits states from collecting agency fees from home health care workers that do not wish to join or support a union that would otherwise advocate on their behalf.

The state of Illinois, through its Home Services Program, allowed Medicaid patients that would typically require institutional care to hire a home health care worker (also referred to as a "personal assistant") to provide care services in the home. In this system, state law recognized both the State itself and patients receiving care in their homes as employers of the personal assistants. Patients, or "customers" in this statutory scheme, controlled much of the employment relationship. For instance, patients controlled "the hiring, firing, training, supervising, and disciplining [of personal assistants]; they also define the [personal assistant's] duties by proposing a 'Service Plan.'"[68] The service plan detailed the personal assistant's responsibilities and had to be approved by both the patient and their physician.[69] The state does play some role in the employment relationship. Illinois "[established], following negotiations with the union, the most important terms of their employment, including wages, benefits, and basic qualifications."[70] The state directly paid personal assistants with federal Medicaid funds.[71]

[59] *Id*.
[60] Labor Report, *supra* note 52.
[61] Winant, *supra* note 52 at 96.
[62] *Creative Destruction*, *supra* note 13.
[63] *Key Facts*, *supra* note 46, at 4.
[64] *Id*.
[65] *Harris*, 573 U.S. at 616.
[66] *Id.* at 1.
[67] *Id*.
[68] *Id*.
[69] *Id.* at 3.
[70] *Harris*, 573 U.S. at 1 (Kagan, J., dissenting).
[71] *Harris*, 573 U.S. at 3.

Additionally, Illinois authorized state employees to join labor unions and to "bargain collectively on the terms and conditions of employment" under Section 6 of the Illinois Public Labor Relations Act (PLRA).[72] This statute applied to all state employees and any "political subdivisions of the State."[73] A union, at the designation of the state's Public Labor Relations Board, was to be selected as the representative of the majority of public employees in an appropriate unit. In order to support the union, "the PLRA contains an agency-fee provisions, i.e., a provision under which members of a bargaining unit who do not wish to join the union are nevertheless required to pay a fee to the union."[74] The statute characterized this fee as a "fair share" provision, essentially ensuring that public employees covered by the negotiated collective bargaining agreement to "pay their proportionate share of the costs of the collective-bargaining process, contract administration and pursuing matters affecting wages, hours, and conditions of employment."[75]

Three petitioners—Theresa Riffey, Susan Watts, and Stephanie Yencer-Price—were personal assistants employed under Illinois' Rehabilitation Program. None of these workers were members of the union. Petitioners sought to challenge the state's "fair share" provision on the grounds that by making them pay fees to the union they were being forced to subsidize speech that they did not support in violation of the First Amendment.[76] The Supreme Court agreed with petitioners. While, in a previous case, *Abood v. Detroit Bd. of Ed.*, the Court had recognized the ability of public sector unions (in that case, the Detroit Federation of Teachers) to collect fees from non-Union members, Justice Alito distinguished this case from *Harris*.[77] His distinction rested on two premises. First, he questioned the logic of the *Abood* Court's analysis. Second, he reasoned that the personal assistants were not actually public employees at all, but, rather, they were a third class of workers, "quasi-public" employees, that could not be coerced into paying agency fees.[78]

In his reading, Justice Alito found that *Abood* rested on a series of faulty assumptions. For instance, he believed that the *Abood* Court misinterpreted earlier precedent to reach a conclusion about "the constitutionality of compulsory payments to a public-sector union."[79] Additionally, the *Abood* Court did not appreciate the differences between non-union public employees subsidizing union speech and non-union private employees doing the same: "In the public sector, core issues such as wages, pensions, and benefits are important political issues, but that is generally not so in the private sector."[80] There were also considerable administrable problems when unions tried to classify what conduct is directly related to collective bargaining and what is overtly political conduct.[81] Likewise, there were "practical problems" confronting non-union employees that want to challenge any union conduct as not germane to collective bargaining, and, consequently, cannot be subsidized by the non-union employee's "fair share"

[72] *Id*. at 4-5.
[73] *Id*. at 5.
[74] *Id*.
[75] *Id*.
[76] *Id*. at 7.
[77] *Abood v. Detroit Bd. of Ed.*, 341 U.S. 209 (1977).
[78] *Id*. at 20, 21.
[79] *Harris*, 573 U.S. at 17.
[80] *Id*.
[81] *Id*. at 18.

fee.[82] For these reasons, *Abood* was on shaky intellectual footing for the Court's conservative majority.

Gender

Gender plays a crucial role in reinforcing social hierarchies that keep capitalism in motion. Specifically, by degrading home care as "women's work" and labor that takes place in private spheres that should be free from state intrusion, the law classifies this work as something not to be valued in the same way that other forms of work (work that is often performed by members of the dominant group), like factory work or construction. Given that home care work has historically been associated with the unpaid labor of women, it has been easily dismissed as a legitimate form of work. Peggie Smith writes, "Domestic service is devalued and undervalued because of its close association with women's unpaid work in the home. Regarded as women's work, domestic service suffers from the perception that its successful performance depends not on skill but on a woman's innate ability."[83]

Just like racism is a crucial element in designating one group as dominant and an another as subordinate to establish a hierarchy that supports capitalism, sexism works towards the same goal. Stereotypes about home care being "women's work" that is rooted in obligation, self-sacrifice, and familial love legitimate capitalism's devaluation of women's labor. Instead of being work that should be taken seriously, home care is often dismissed as "unskilled" labor, or labor that must be done out of a familial obligation, often performed along gender lines. Justice Alito's majority opinion traffics in these same stereotypes. He goes to great lengths to note that home care workers in the state of Illinois are more often than not family members taking care of dependent family members; he also is quick to mention that the state only sets a minimum set of requirements to be classified as home care "personal assistant." However, the force behind Justice Alito's argument is his designation of these workers as "quasi-public employees." Here, he asserts that these workers are employed by dependent "customers" who set individual terms and conditions of employment. In his telling, these workers share no common workspace and working conditions and have individualized relationships with the people they care for—the role of the state is minimal and, therefore, it has no ability to establish collective bargaining rights for these workers.

Implicit in this argument is the idea that work in the home is a largely private arrangement born out of necessity, not a form of work to be regulated. This public-private distinction is rooted in perceptions about a woman's role in the home, the private sphere of domesticity. Indeed, as legal scholars Kathleen Boris and Jennifer Klein note:

> the court's majority accepted the plaintiff's argument that taking care of one's own disabled children in the home is what female family members should do: provide support as unpaid labor of love and obligation—which by definition means they are not workers. The home, in the eyes of the court's conservative majority, is a private place that a union has no business invading.[84]

[82] *Id*. at 19.
[83] Smith, *supra* note 47, at 4.
[84] Eileen Boris and Jennifer Klein, *A Shameful Setback for Home Care Worker Rights*, Aljazeera America, http://america.aljazeera.com/opinions/2014/7/supreme-court-harrisvquinnunionhomecarelaborwomen.html (last accessed May 15, 2022).

A clear line can be drawn from majority opinion's logic to earlier laws and statutes. In the nineteenth century, statutes that were designed to ensure that women kept the fruits of their own labor only extended to "wages or income earned outside the home, and so for the majority of working women, who toiled inside the household, the earning statuses left the old doctrine of marital service intact."[85] Similarly, women, primarily seen as mothers and wives during this time, were excluded from key protections of the Civil Rights Act of 1866, which ensured the right to contract and other economic rights.[86] Instead, their economic rights were subordinate to their husband, the head of the household. Similarly, familial and charitable obligation have been invoked by market actors, such as hospitals, to rationalize care work as something other than compensable labor.[87]

Oddly enough, Justice Alito does not grapple with the inherent tension in his argument as to why personal assistants should not be considered true public employees. The majority simultaneously argues that personal assistants are quasi-public employees because their work is both too intimate and too professional, both outside of the market and governed by it. On the one hand, the work of home health care aides is personal, largely performed by family members looking after relatives. On the other hand, the relationship between caregiver and patient is sanitized by the market: the patient is a "customer" employing their wife, sister, or mother as a "personal assistant." Justice Alito does a disservice to these workers by suggesting that their labor is lesser *because* of a familial connection only to turn around and rob them of any love or intimacy attached to their work by professionalizing it with phrases such as "customer," and "supervisor."

Additionally, Justice Alito plainly downplays the role that Illinois already has in setting the terms and conditions of employment of these workers and does not seriously grapple with existing labor law doctrine, like joint employer status. As noted by Justice Kagan in dissent:

> Illinois sets all the workforce-wide terms of employment. Most notably, the State determines and pays the employees' wages and benefits, including health insurance…By regulation, Illinois establishes the job's basic qualifications…So too, the State describes the services any personal assistant may provide, and prescribes the terms of standard employment contracts entered into between personal assistants and customers.[88]

It is difficult to imagine what issues could be more relevant to a prospective worker than her pay, her benefits, and the qualifications and terms associated with the job. However, these factors play little role in Justice Alito's analysis into whether personal assistants are employed by the State. Similarly, the majority does not seriously wrestle with the labor law doctrine of joint employment status. Under this theory, employees may be employed by two or more employers if both are considered employers under the common law, and "they share or codetermine those matters governing the essential terms and conditions of employment," such as wages, benefits, hours of work,

[85] Forbath, *supra* note 40, at 31.
[86] *Id*. at 30.
[87] Rogers, *supra* note 12, at 1872.
[88] *Harris*, 573 U.S. at 4, 5 (Kagan, J., dissenting).

hiring, discharge, discipline, supervision and direction.[89] Instead of seriously engaging with this assessment, Justice Alito dismisses this test as inconclusive out of hand in a footnote.[90] By relying on a rigid definition as to what work qualifies as "public", the Court shuts out home health care workers from the legal protections that would win them key benefits.

Race

By devaluing the labor of a largely black, brown and female workforce, the law reinforces existing hierarchies that are necessary to further capitalist success. Racism is a key component in legitimizing the legal oppression of black and brown workers. As noted by Crenshaw, "Laws and customs helped create 'races' out of a broad range of human traits…Blacks were characterized one way, whites another. Whites became associated with normatively positive characteristics; Blacks became associated with the subordinate, even aberrational characteristics."[91] Because of these racist associations, the dominant group looks at the subordination of the oppressed group as legitimate. Indeed, these distinctions legitimated the American revolution and the founding of this nation. While slavery literally financed the American revolution, it also allowed "the colonial gentry to forge a revolutionary 'equal rights' outlook and republican political culture among all…white colonists…Thereafter, black subordination remained a potent element of American national identity, binding white Americans together as 'equals' across the unacknowledged breaches of class."[92]

Home care work became an occupation filled with Black and brown workers because of prevailing stereotypes about minority women. Glenn writes about this phenomenon extensively. In the early twentieth century, as New Deal programs began to employ women of color to perform care work, government officials recruited them specifically because they were perceived to be docile, submissive, and easily subordinated.[93] Furthermore, these stereotypes also helped to reinforce the self-perception of the dominant class. As Crenshaw also notes, "Racism helps create an illusion of unity through the oppositional force of a symbolic 'other.' The establishment of an 'other' creates…a burgeoning common identity of all non-stigmatized parties–whose identity and interests are defined in opposition to the other."[94]

This helped to strengthen the dynamic between white men and white women. Historically, white women have been able to ignore their own oppression within the home by shifting demanding house work—taking care of a household, children, and other dependents—onto black and brown employees. As one domestic worker put it to Glenn:

> My mother used to say the Black women is the white man's mule and the white woman is his dog. Now, she said that to say this: we do the heavy work and get beat whether we do it well or not. But the white woman is closer to the master

[89] *Browning-Ferris Industries*, 362 NLRB No. 186 (2015).
[90] *Harris*, 573 U.S. at 28 ("The dissent suggests that the concept of joint employment already supplies a clear line of demarcation…but absent a clear statutory definition, employer status is generally determined based on a variety of factors that often do not provide a clear answer.")
[91] Crenshaw, *supra* note 4, at 1373-1374.
[92] Forbath, *supra* note 40, at 2-3.
[93] Boris and Klein, *supra* note 36.
[94] Crenshaw, *supra* note 4, at 1370.

> and he pats them on the head and lets them sleep in the house, but he ain' gon' treat neither one like he was dealing with a person.[95]

In this way, race proves to be a key element in the exploitation of home care workers. It is not simply that this labor is devalued because it is largely performed by women; instead, it is devalued because it is performed by *Black and brown* women who can be subordinated by all members of the dominant group. Simultaneously, as noted by Glenn, this arrangement distracts white women, who also suffer under this hierarchy, from their own oppression in that there is always a group below them to oppress.

While race is not explicitly mentioned in *Harris v. Quinn*, its shadow looms large over Justice Alito's opinion. For instance, the majority characterizes personal assistants as only needing to meet "some basic threshold qualifications for employment," as if to suggest that nearly anyone can perform this work.[96] These rhetorical devices—cabining some forms of work as "skilled" and others "unskilled"—are often used to diminish the value of an individual's labor and to justify suppressing that person's wages.[97] Indeed, "unskilled" labor is often subtext for describing labor performed by Black and brown workers.[98] Without even directly referencing race, Justice Alito's framing of the work performed by personal assistants helps to reinforce stereotypes about this class of workers that legitimate their place on the social hierarchy. Similarly, the impact on Black and brown workers is undeniable given the demographics of the home care workforce. Nearly 60 percent of home care workers are people of color, and nearly one quarter were born outside of the United States.[99] Furthermore, it is impossible to disentangle the majority opinion's dismissal of these workers and their rights from how the law has generally treated them over the decades. Home care workers were originally not covered by the country's premiere labor protection statute, the National Labor Relations Act. Even today, its protections do not extend to domestic workers, such as home care workers. Through prevailing stereotypes about labor often performed by people of color lacking any requisite "skill", the law sanctions the subjugation of these workers by withholding certain legal rights that would lead to both better material conditions and the dignity associated with the blessing of the law.

Conclusion

Existing racial and gender stereotypes legitimate and perpetuate hierarchies that are later codified in law in service of capitalism and ruling class wealth accumulation. This legal dynamic is best demonstrated by *Harris v. Quinn*, where the Supreme Court blocked home health aides from recognition as public employees, and, with that, status, key labor protections and benefits. These labor rights produced tangible benefits for home care workers, much to the dismay of wealthy benefactors that financed the original lawsuit, like the Koch Foundation and the Walton

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[95] Glenn, *supra* note 5, at 17.
[96] *Harris*, U.S. 573 at 4
[97] Abigail Johnson Hess, *'All Work Produces Value': What Experts Say Eric Adams gets Wrong About 'Low Skill' Workers*, CNBC, https://www.cnbc.com/2022/01/06/what-experts-say-eric-adams-gets-wrong-about-low-skilled-workers.html (last accessed May 15, 2022).
[98] Annelies Goger and Luther Jackson, *The Labor Market Doesn't Have a 'Skills Gap'—It Has an Opportunity Gap*, The Brookings Institute, https://www.brookings.edu/blog/the-avenue/2020/09/09/the-labor-market-doesnt-have-a-skills-gap-it-has-an-opportunity-gap/ (last accessed May 15, 2022).
[99] *Key Facts*, *supra* note 46, at 4.

Family Foundation.[100] However, *Harris* laid the foundation for future Court decisions that would further limit the political power of workers and unions. In *Janus v. AFSCME,* the Supreme Court extended the logic of *Harris* to *all* public-sector employees.[101] The Court overturned *Abood* and held that the First Amendment prohibited all public employees from being compelled to produce agency fees to unions in exchange for costs incurred during the collective bargaining process.[102]

In order to rebalance the allocation of power between capitalists and workers, a broad coalition of laborers will need to organize to assert their political power. One option is to do so in the spirit of the Civil Rights movement, which worked to subvert the dominant hegemony by creating a counter-hegemony within its existing framework. As Kimberlé Crenshaw noted, this movement was successful because it did not seek to overturn the existing social order, but instead worked to expand who could participate in it.[103] It is possible for home care workers and other laborers to do the same. By making appeals to the dignity of work and invoking earlier American eras that respected workers for their contributions to society, workers can expand the hegemony that currently exploits them. The political power of workers—and, by extension, the material benefits that they earn for their work—rests on their ability to weave their story into the broader fabric of the American political and economic order. In the twilight of the Covid-19 pandemic, workers across the country are currently making their claim to respect, voice, and dignity in the workplace. While there are institutional impediments to a new, robust and forceful labor movement in the United States, workers are primed to challenge the existing hierarchy.

[100] Eileen Boris and Jennifer Klein, *The Fate of Care Worker Unionism and the Promise of Domestic Worker Organizing: An Update*, Feminist Studies, Vol. 40, No. 2, Special Issue: Food and Ecology (2014).
[101] *Janus v. AFSCME*, 585 U.S. ___ (2018).
[102] *Id.*
[103] Crenshaw, *supra* note 4, 1386 ("Joseph Femia, interpreting Gramsci, states that 'the dominant ideology in modern capitalist societies is highly institutionalized and widely internalized. It follows that a concentration on frontal attack, on direct assault against the bourgeois state ('war of movement' or 'war of manoeurvre') can result only in disappointment and defeat.' Consequently, the challenge in such societies is to create a counter-hegemony by maneuvering within and expanding the dominant ideology to embrace the potential for change.")

Applicant Details

First Name	**Daniel**
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Contact Phone Number	**7036063450**

Applicant Education

BA/BS From	**College of William and Mary**
Date of BA/BS	**May 2021**
JD/LLB From	**Emory University School of Law** **https://law.emory.edu/index.html**
Date of JD/LLB	**May 7, 2024**
Class Rank	**10%**
Law Review/Journal	**Yes**
Journal(s)	**Emory Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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May 30, 2023

The Honorable Juan R. Sánchez
United States District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Chief Judge Sánchez:

I am a rising third-year student at the Emory University School of Law, and am writing to apply for a clerkship in your chambers for the 2024–2025 term.

While in law school, I have developed strong legal research and writing skills—producing a student comment that will be published in the *Emory Law Journal*, submitting written advocacy to the Alabama Parole Board, and drafting memoranda for the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the Eleventh Circuit. In each instance, I received praise for my thorough research, clear prose, and robust analysis. As such, I am confident in my ability to succeed as a law clerk.

My desire to clerk is driven by a deep belief in public service. Through my externships and volunteer work, I have seen the tangible effects that our legal system can have on individuals and their communities. These experiences have reinforced my decision to pursue a public interest career. Serving as your clerk would allow me to gain insight on our judicial system's role in promoting fairness and justice, enabling me to be a more effective advocate in the future.

I have enclosed my resume, writing sample, law school transcript, and two letters of recommendation. The Honorable Jill A. Pryor, U.S. Circuit Judge for the Eleventh Circuit Court of Appeals, and her career law clerk, Elizabeth Eager, have also agreed to serve as references for my application. They can both be reached at (404) 335-6525. If you have any questions, or should you need any additional materials, I can be contacted at (703) 606-3450 or daniel.xu@emory.edu. Thank you for your consideration.

Respectfully,

Daniel W. Xu

Enclosures

DANIEL W. XU

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EDUCATION

Emory University School of Law — **Atlanta, GA**
J.D. Candidate — May 2024

- GPA: 3.775 (Top 10%)
- Journal: *Articles Editor*, Emory Law Journal. Selected for publication in Volume 73 (forthcoming 2024)
- Awards: Justice John Paul Stevens Public Interest Fellow, Dean's List (all semesters)
- Activities: Civil Rights Society, American Constitution Society, Asian Pacific American Law Student Association, Emory Public Interest Committee, Morningside House Coordinator, DeKalb County Election Clerk

The College of William & Mary — **Williamsburg, VA**
B.A. in Public Policy, Minor in Economics — May 2021

- Activities: *Fellow*, D.C. Institute for American Politics; *President*, Kappa Delta Rho Fraternity; Orientation Aide; *Residential Program Assistant*, National Institute of American History & Democracy

EXPERIENCE

Federal Defender Program, Inc. — **Atlanta, GA**
Selected as a Fall 2023 Legal Extern — August 2023 – November 2023

ACLU of the District of Columbia — **Washington, D.C.**
Legal Intern — May 2023 – Present

- Researched and drafted memoranda on issues related to the Americans with Disabilities Act and Rehabilitation Act

U.S. Court of Appeals for the Eleventh Circuit — **Atlanta, GA**
Judicial Extern for the Honorable Jill A. Pryor — January 2023 – April 2023

- Researched and drafted bench memoranda and opinions for cases on appeal before the Court
- Observed oral arguments before three-judge panels, as well as rehearings en banc
- Assisted chambers by writing case summaries and literature reviews

Southern Center for Human Rights — **Atlanta, GA**
Legal Extern — September 2022 – November 2022

- Advocated for a client, under attorney supervision, before the Alabama Board of Pardons and Paroles. Spoke with them in prison, conducted family interviews, and delivered oral and written testimony in support of their release
- Investigated juror information for a *Batson* challenge against a prosecutor's preemptory strikes
- Researched recent capital murder dispositions as part of an effort to negotiate a favorable plea bargain

U.S. District Court for the District of Columbia — **Washington, D.C.**
Judicial Intern for the Honorable Reggie B. Walton — May 2022 – July 2022

- Researched and drafted memorandum opinions resolving 12(b)(1) and 12(b)(6) motions to dismiss
- Proofread documents and citations written by clerks, court attorneys, and other interns
- Observed jury trials, motion hearings, re-entry progress hearings, and other court proceedings

Emory LGBTQ+ Legal Services Clinic — **Atlanta, GA**
Clinic Volunteer — October 2021 – May 2022

- Examined state-level approaches to conversion therapy regulation. Reviewed how states and circuits addressed marriage equality prior to *Obergefell v. Hodges*. Analyzed cases, state constitutions, and state statutes

Chicago Justice Project — **Chicago, IL**
Open Cities Project Remote Volunteer — October 2021 – December 2021

- Researched and drafted legal memoranda on public information laws and the availability of police accountability data

Emory Public Interest Committee — **Atlanta, GA**
"Know Your Rights" Volunteer — September 2021 – May 2022

- Instructed high school students about their rights and responsibilities during encounters with law enforcement officers

ICF International, Inc. (ICF) — **Fairfax, VA**
Workforce Innovations and Poverty Solutions (WIPS) Intern — June 2020 – August 2020

- Compiled, organized, and visualized data for federal contract reports
- Drafted literature reviews on community victimization, social determinants of health, and workforce readiness

ADDITIONAL INFORMATION

Fluent Mandarin speaker. Former competitive chess player (USCF 1631). Avid Washington Wizards fan.

Advising Document - Do Not Disseminate

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Print Date: 05/16/2023

Beginning of Academic Record

Fall 2021

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	505	Civil Procedure	4.000	4.000	A-	14.800
LAW	510	Legislation/Regulation	2.000	2.000	A-	7.400
LAW	520	Contracts	4.000	4.000	A-	14.800
LAW	535A	Intro.Lgl Anlys, Rsrch & Comm	2.000	2.000	A	8.000
LAW	550	Torts	4.000	4.000	B+	13.200
LAW	599A	Professionalism Program	0.000	0.000	S	0.000
LAW	599B	Career Strategy & Design	0.000	0.000	S	0.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.638	Term Totals	16.000	16.000	16.000	58.200
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.638	Comb Totals	16.000	16.000	16.000	58.200
Cum GPA	3.638	Cum Totals	16.000	16.000	16.000	58.200
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.638	Comb Totals	16.000	16.000	16.000	58.200

Spring 2022

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	525	Criminal Law	3.000	3.000	A	12.000
LAW	530	Constitutional Law I	4.000	4.000	A	16.000
LAW	535B	Introduction to Legal Advocacy	2.000	2.000	A	8.000
LAW	545	Property	4.000	4.000	A	16.000
LAW	599A	Professionalism Program	0.000	0.000	S	0.000
LAW	701	Administrative Law	3.000	3.000	B+	9.900

			Attempted	Earned	GPA Units	Points
Term GPA	3.869	Term Totals	16.000	16.000	16.000	61.900
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.869	Comb Totals	16.000	16.000	16.000	61.900
Cum GPA	3.753	Cum Totals	32.000	32.000	32.000	120.100
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.753	Comb Totals	32.000	32.000	32.000	120.100

Fall 2022

Program: Doctor of Law
Plan: Law Major

Advising Document - Do Not Disseminate

Name: **Daniel Xu**
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Course		Description	Attempted	Earned	Grade	Points
LAW	669	Employment Discrimination	3.000	3.000	A	12.000
LAW	747	Legal Profession	3.000	3.000	B+	9.900
LAW	844A	Judicial Decision Making	3.000	3.000	A	12.000
LAW	870A	EXTERN: Public Interest	1.000	1.000	S	0.000
LAW	871	Extern: Fieldwork	2.000	2.000	S	0.000
Course Topic:		Fieldwork: 150 Hours (2 units)				

			Attempted	Earned	GPA Units	Points
Term GPA	3.767	Term Totals	12.000	12.000	9.000	33.900
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.767	Comb Totals	12.000	12.000	9.000	33.900
Cum GPA	3.756	Cum Totals	44.000	44.000	41.000	154.000
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.756	Comb Totals	44.000	44.000	41.000	154.000

Spring 2023

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	632X	Evidence	3.000	3.000	B+	9.900
LAW	671	Trial Techniques	2.000	2.000	S	0.000
LAW	721	Federal Courts	3.000	3.000	A	12.000
LAW	729X	State Constitutional Law	2.000	2.000	A	8.000
LAW	870E	EXTERN: Judicial	1.000	1.000	S	0.000
LAW	871	Extern: Fieldwork	2.000	2.000	S	0.000
LAW	885	Emory Law Journal:Second Year	2.000	2.000	A+	8.600

			Attempted	Earned	GPA Units	Points
Term GPA	3.850	Term Totals	15.000	15.000	10.000	38.500
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.850	Comb Totals	15.000	15.000	10.000	38.500
Cum GPA	3.775	Cum Totals	59.000	59.000	51.000	192.500
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.775	Comb Totals	59.000	59.000	51.000	192.500

Fall 2023

Program: Doctor of Law
Plan: Law Major

Course		Description	Attempted	Earned	Grade	Points
LAW	622A	Const'lCrim.Proc:Investigation	3.000	0.000		0.000
LAW	635	Child Welfare Law and Policy	2.000	0.000		0.000
LAW	675	Constitutional Lit	3.000	0.000		0.000
LAW	731L	Crimmigration	2.000	0.000		0.000
LAW	860A	Colloquium Series Workshop	2.000	0.000		0.000
LAW	870I	EXTERN: Advanced	1.000	0.000		0.000
LAW	871	Extern: Fieldwork	2.000	0.000		0.000

			Attempted	Earned	GPA Units	Points
Term GPA	0.000	Term Totals	15.000	0.000	0.000	0.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	0.000	Comb Totals	15.000	0.000	0.000	0.000

Advising Document - Do Not Disseminate

Name: **Daniel Xu**
Student ID: **2537607**

Cum GPA	3.775	Cum Totals	74.000	59.000	51.000	192.500
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.775	Comb Totals	74.000	59.000	51.000	192.500

Law Career Totals

Cum GPA:	3.775	Cum Totals	74.000	59.000	51.000	192.500
Transfer Cum GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.775	Comb Totals	74.000	59.000	51.000	192.500

End of Advising Document - Do Not Disseminate

EMORY LAW

Fred Smith, Jr.
Charles Howard Candler Professor of Law

June 9, 2023

The Honorable Juan R. Sánchez
United States District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Recommendation Letter for Daniel Xu

Dear Judge Sánchez:

It is my pleasure to recommend Daniel Xu—an exceptional student in Emory Law School's class of 2024— for a judicial clerkship. Over the past year, I have assessed Daniel's clerkship potential in three settings. First, he authored a substantial research paper that I supervised. Second, Daniel enrolled in a small, writing-intensive seminar that I co-taught. Third, I taught Daniel in Federal Courts. My resultant impression is that Daniel would make a first-rate clerk. Indeed, I have invited him to serve as my research assistant next year. He is brilliant, mature, inquisitive, and kind. Further, he writes with elegance, clarity, and sophistication. I recommend him enthusiastically.

I first encountered Daniel in the fall of his second year of law school, when he asked me to serve as his advisor for a research paper he was submitting to the Emory Law Journal. (Each year, students on the journal write and submit research papers for potential publication.) Daniel chose to write about state criminal liability for unconstitutional violence. Because he chose to write about state law rather than federal law, he had to carefully canvas relevant legal regimes in all fifty states. Moreover, he needed to identify trends and flaws in current doctrine as he developed a workable, balanced recommendation. I was impressed with his detailed research and careful analysis. Further, I appreciated how receptive he was to critical feedback. He genuinely welcomed the opportunity to work through potential gaps in his arguments as he edited the paper. That said, Daniel is no pushover. He defended his ideas where appropriate with well-reasoned arguments and data. It was no surprise to me at all that Emory Law Journal ultimately selected his piece of publication. I assigned the paper an A+.

The second setting in which I have gotten to know Daniel is a class called State Constitutional Law that I co-teach with a former Chief Justice of the Georgia Supreme Court. Eighteen students are enrolled in the class. All are expected to do fairly heavy reading and come to class prepared to carefully engage in discussions. Students also submit two required papers over the course of the semester. In this class, Daniel was one of the stars. It was genuinely a joy

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to call on him in class because I always knew his comments would be filled with non-obvious insights that meaningfully advanced the discussion. I learned a great deal from that commentary.

Moreover, Daniel authored two excellent papers for State Constitutional Law. The first paper was about educational adequacy requirements in state constitutions. In my written feedback to Daniel about the paper, I called it "thoughtful," "well-balanced," and "insightful." The second paper addressed the intersection of property rights and economic development. In my written feedback, I called it "excellent work," "well-reasoned," and "easy to follow. My colleague offered similarly high praise of both papers. Daniel was one of the few students in the course who received an A on both of the assigned papers. Ultimately, he earned an A in the course.

Another setting where I got to know Daniel was in Federal Courts during the second semester of his 2L year. That course covers topics that are central to any Article III clerkship: subject matter jurisdiction; appealability; justiciability; abstention; immunity; Congressional control of federal courts; and habeas. The habeas component of that course involves a deep dive into the most complex aspects of habeas: procedural default; second or successive petitions; retroactivity; deference to state court adjudications under 28 U.S.C. §2254(d); and exhaustion. Daniel's visits to office hours and his commentary in class showed careful engaged these complex doctrines. It was therefore not a surprise that of the 69 students who enrolled in Federal Courts, Daniel wrote the third best exam in the class. Accordingly, he earned an A. For context, Federal Courts consistently attracts the top students at Emory Law and, as such, it is exceptionally difficult to earn an A in that setting.

I hope this letter conveys my enthusiastic endorsement of this clerkship application. Daniel is going to make a formidable lawyer. As he begins that path, any chambers would be fortunate to have him as a clerk. He has a gift for seeing both the big picture and the details. He writes beautifully and clearly. And he is a pleasure with whom to work. If you have any further questions, please do not hesitate to contact me at 706-540-4525.

Best regards,

Fred Smith, Jr.

United States District Court
for the District of Columbia
Washington, D.C. 20001

Chambers of
Reggie B. Walton
United States District Judge

October 14, 2022

Dear Judge:

I write to enthusiastically recommend Daniel Xu for a clerkship in your chambers. I currently serve as a law clerk to the Honorable Reggie B. Walton of the United States District Court for the District of Columbia.

Daniel served as one of nine interns in Judge Walton's chambers during the summer of 2022, and was a stand-out, both in terms of his work product and engagement as part of our chambers community. Interns for Judge Walton are responsible for drafting substantive writing assignments resolving pending motions in active cases before Judge Walton, including memorandum opinions, orders, and bench memoranda; editing and Bluebooking opinions and orders drafted by Judge Walton's clerks; and attending Judge Walton's hearings.

As Daniel's supervisor, I found that his work to be very strong. For his main substantive assignment, he prepared a memorandum opinion resolving a pending motion to dismiss in a civil case. This assignment required significant research skills, analysis, and critical thinking on Daniel's part, as it presented a novel issue over which there is currently a circuit split and no clear D.C. Circuit precedent. Daniel not only met, but exceeded, this challenge. His research was thorough, and his draft was well-constructed and required fewer edits than I would normally give to an intern. Throughout this assignment, Daniel took the initiative to set up in-person meetings with me to orally discuss his research findings and the progress of his assignment, demonstrating effective communication skills. These conversations with Daniel reminded me of the collaborative conversations I often have with my co-clerks—conversations which I have found to be an essential part of a well-functioning chambers environment.

Additionally, Daniel is a pleasant and friendly person. He took the initiative to get to know Judge Walton and his law clerks on a personal level and was well-liked in chambers. I have no doubt that Daniel's capacity for critical thinking, strong writing and research skills, and collegiality would make him a valuable addition to any chambers. I would be happy to discuss his qualifications in further detail and can be reached at (336) 404-2873.

Sincerely,

Haley Hawkins
Law Clerk to the Hon. Reggie B. Walton
Term: October 2021 to September 2023

DANIEL W. XU
1084 Mill Field Ct., Great Falls, VA 22066 | 703-606-3450 | daniel.xu@emory.edu

WRITING SAMPLE

This memorandum opinion draft was researched and written during my summer internship in the Chambers of the Honorable Reggie B. Walton, United States District Judge for the District of Columbia. It is my original work, but reflects feedback from my supervising clerk. It has been redacted, condensed, and approved for use as a writing sample.

Written Summer 2022

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[redacted], Plaintiff,	)	
v.	)	Civil Action No. [redacted]
[redacted], Defendant.	)	

MEMORANDUM OPINION

The plaintiff, [redacted], brings this civil action against the defendant [redacted], asserting a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. ("ADA"). See Amended Complaint ("Am. Compl.") at 1, ¶¶ 7–14, ECF No. 32. Currently pending before the Court is the Defendant's Motion to Dismiss ("Def.'s Mot." or the "defendant's motion"), ECF No. 31. Upon careful consideration of the parties' submissions,[1] the Court concludes for the following reasons that it must grant the defendant's motion to dismiss to the extent that it seeks dismissal for failure to state a claim but deny it in all other respects.

I. BACKGROUND

A. Factual Background

The plaintiff initiated this civil action on August 11, 2020. See generally Compl. ¶ 18. The plaintiff resides in [redacted], and states that she is "an individual with disabilities as defined by the ADA." Am. Compl. ¶ 1. She requires various accommodations because she is "unable to . . . walk[] more than a few steps without assistive devices[,] . . . is bound to . . . a wheelchair[,] . . . and has limited use of her hands." Id. The defendant owns a "place of public accommodation . . . known as [redacted][,]" located on [redacted] in Washington, D.C. (the "hotel"), id. ¶ 2, and utilizes an online reservations system ("ORS" or "websites") so that "members of the public may reserve guest accommodations and review

[1] In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the plaintiff's original Complaint ("Compl."), ECF No. 2; (2) the plaintiff's Statement Made Pursuant to 28 U.S.C. Section 1746 ("Pl.'s Statement"), ECF No. 29-2; (3) the Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss ("Def.'s Mem."), ECF No. 31-1; (4) the Plaintiff's Memorandum in Opposition to Motion to Dismiss ("Pl.'s Opp'n"), ECF No. 33; (5) the Defendant's Supplemental Authority in Support of Motion to Dismiss ("Def.'s Suppl. Auth."), ECF No. 34; and (6) the Plaintiff's Response to Notice of Supplemental Authority ("Pl.'s Resp. Suppl. Auth."), ECF No. 35.

information pertaining to . . . [the] accommodations of the [hotel,]" id. ¶ 9. This ORS includes third-party websites such as booking.com, expedia.com, and priceline.com. See id. The defendant is being sued for alleged violations of 28 C.F.R. § 36.302(e) and Title III of the ADA. See id. at 1, 11 ¶¶ 6–10, 13, 19, 22, 24.

This action is one of many similar lawsuits that have been initiated by the plaintiff around the country. See [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Md. [redacted]) ("In total, [the p]laintiff has filed at least 557 suits in sixteen different states, plus the District of Columbia."). The plaintiff identifies as a "tester" who files such actions "for the purpose of asserting her civil rights and . . . determining whether places of public accommodation . . . are in compliance with the ADA." Compl. ¶ 2. Despite the plaintiff's use "of nearly identically drafted [c]omplaints[,]" her lawsuits have generated inconsistent rulings, with "myriad decisions cutting both ways across the country." [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Md. [redacted]) (citation omitted). Notably, another member of this Court recently dismissed one of the plaintiff's lawsuits for lack of standing. See [redacted] v. [redacted], [redacted], [redacted] WL [redacted] (D.D.C. [redacted]), aff'd, [redacted], [redacted] WL [redacted] (D.C. Cir. [redacted]).

In the case currently before the Court, the plaintiff visited the defendant's ORS in July 2020 "for the purpose of reviewing and assessing the accessible features at the [hotel] and ascertain[ing] whether they met the requirements of [the ADA Regulation.]" Am. Compl. ¶ 10. She wanted to "ascertain[] whether or not she would be able to stay at the hotel[,]" as she "planned to travel to various states around the country, including Washington, D.C.[,] as soon as the [COVID-19] crisis abated[.]" Id. However, the plaintiff was unable to do so because the defendant's ORS "did not identify or allow for reservation of accessible guest rooms and did not provide sufficient information regarding accessibility at the hotel." Id. at ¶ 10.

In June 2021,[2] the plaintiff "again reviewed [the d]efendant's ORS and found that it still did not comply with the [ADA] Regulation[.]" Id. ¶ 13. She did so "for the purpose of planning her [upcoming] trip and ascertaining where on her trip she would be able to book an accessible room at an accessible hotel." Id. That summer,[3] the plaintiff traveled by car through Washington, D.C., and several other states (the "summer 2021 trip"). See id. While in Washington, D.C., she "needed a hotel to stay in[.]" Pl.'s Opp'n at 4. However, since the defendant's ORS did not contain accessibility information that was required by the ADA Regulation, the plaintiff alleges that she was unable to "ascertain[] whether . . . she would be

[2] There are inconsistencies in the plaintiff's filings about the timing of this ORS visit. In her Amended Complaint and Response to Supplemental Authority, the plaintiff states that she visited the ORS in June 2021. See Am. Compl. ¶ 13; Pl.'s Resp. Suppl. Auth. at 2. However, in her Opposition, she states that this occurred in August 2021. See Pl.'s Opp'n at 4. Based upon the temporal proximity of these inconsistencies, as well as the fact that these ORS visits occurred for the purpose of planning the same cross-country trip, the Court infers that these filings refer to the same incident. Accordingly, the Court will thereafter refer to this ORS visit as the "June 2021" visit.

[3] There are also inconsistencies in the plaintiff's filings about the month that this trip occurred. In her Amended Complaint, Response to Supplemental Authority, and Statement, the plaintiff states that this trip occurred in July 2021. See Am. Compl. ¶ 13; Pl.'s Resp. Suppl. Auth. at 2; Statement ¶ 2. However, in her Opposition, the plaintiff states that this trip occurred after she "reviewed the [defendant's] ORS in August 2021[.]" See Pl.'s Opp'n at 4. Based upon the temporal proximity of these dates, and the lack of indication that the plaintiff took multiple trips, the Court infers that these filings refer to the same trip. As such, the Court will refer to it as the "summer 2021 trip."

able to stay at the hotel during her trip[,]" Am. Compl. ¶ 10, and "deprived . . . of the ability to book an accessible room in the same manner as other non-disabled persons," Pl.'s Opp'n at 4. The plaintiff states that it was "extremely difficult to find hotels with accessible rooms" and that "there were occasions when [she] had to sleep in [her] car." Pl.'s Statement ¶ 4. The plaintiff further represents that she:

> intends that, in December 2022, she will again drive from Florida to such states as New York, Maine, etc. and will therefore drive through Washington, D.C., and will need hotels along her route to comply with the [ADA] Regulation so that she can have the information she needs to select a hotel and book a room

(the "December 2022 trip"). Am. Compl. ¶ 15. During this trip, the plaintiff "will . . . revisit[the defendant's ORS] when looking for a place to stay for the night." Pl.'s Statement ¶ 5.

B. Statutory Background [Section Omitted]

C. Procedural History [Section Omitted]

II. STANDARDS OF REVIEW [Section Omitted]

III. ANALYSIS

The plaintiff alleges that "[t]he violations present at [the d]efendant's websites . . . deprive her of the information required to make meaningful choices for travel . . . and [that she] continues to suffer frustration and humiliation as the result of [those] discriminatory conditions[.]" Am. Compl. ¶ 17. She states that these violations "contribute[] to [her] sense of isolation and segregation . . . and deprive[her] of [the] equality of opportunity offered to the general public." Id. She also alleges that the defendant's violations caused her "stigmatic injury and dignitary harm because it was difficult to find hotels in which to stay[.]" Id. ¶ 15. As a result, the plaintiff has requested declaratory and injunctive relief from the Court. Id. at 11.

The defendant seeks dismissal of the plaintiff's Amended Complaint under both Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Def.'s Mot. at 1. First, the defendant argues that the plaintiff's Amended Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(1) because the "[p]laintiff does not have standing to bring this action." Def.'s Mem. at 4. Second, the defendant argues that the plaintiff's allegations "contain[] none of the essential facts required to state a claim[,]" and therefore, should be dismissed under Federal Rule of Civil Procedure 12(b)(6). Def.'s Mem. at 10–11.

Because a 12(b)(1) motion "presents a threshold challenge to [a] court's jurisdiction[,]" Haase, 835 F.2d at 906, and because a court "can proceed no further" if it lacks subject matter jurisdiction, Simpkins v. District of Columbia Gov't, 108 F.3d 366, 371 (D.C. Cir. 1997), the Court will only conduct a 12(b)(6) analysis after determining whether the plaintiff's case survives the defendant's initial 12(b)(1) claim. See Green v. Stuyvesant, 505 F. Supp. 2d 176, 177 n.2 (D.D.C. 2007) ("[D]ue to the resolution of the defendants' Rule 12(b)(1) request, the Court does not need to address . . . alternative grounds for dismissal at this time."); Al-Owhali v.

Ashcroft, 279 F. Supp. 2d 13, 20 (D.D.C. 2003) ("Although [the d]efendant states in his motion that he is seeking dismissal pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), dismissal, if warranted, could be entered solely on Rule 12(b)(1) grounds."). Accordingly, the Court will proceed by: (1) conducting a 12(b)(1) analysis to determine whether the plaintiff has established standing, and (2) conducting a 12(b)(6) analysis to determine whether the plaintiff has stated a claim upon which relief may be granted.

A. The Defendant's 12(b)(1) Motion to Dismiss

In seeking dismissal of the plaintiff's claim under Federal Rule of Civil Procedure 12(b)(1), the defendant asserts that the plaintiff "has not demonstrated that she suffered an actual and actionable injury that satisfies the standing requirements for subject matter jurisdiction." Def.'s Mem. at 5. The defendant argues that the plaintiff's allegations are "nothing more than mere conjecture and hypothetical injury[,]" id. at 6, as the plaintiff did not actually visit the defendant's hotel during her summer 2021 trip through Washington, D.C., and does not specifically intend to book a room there during her upcoming December 2022 trip, id. at 7. Furthermore, the defendant argues that the plaintiff has not "allege[d] any imminent injury as required to warrant injunctive relief." Def.'s Mem at 7.

In response, the plaintiff states that "[t]he facts set forth in [her Amended] Complaint . . . satisfy not only the [redacted] criteria" for establishing standing, "but also every negative decision in which a court imposed [an] intent-to-book criteria."[4] Pl.'s Opp'n at 4. The plaintiff argues that she has standing because she: (1) reviewed the defendant's ORS "for the purpose of ascertaining where she could stay during her [summer 2021] trip" through D.C.; (2) "traveled to . . . [D.C.] and needed a hotel to stay in;" (3) was "deprived . . . of the ability to book an accessible room in the same manner as other non-disabled persons;" (4) was "deprived of the information she required to make a meaningful choice in selecting a hotel in which to stay;" (5) has a definite intent to return to visit D.C. again in December 2022; and (6) will "again review [the d]efendant's ORS . . . for the purpose of ascertaining where she will be able to stay." See id.

Under Article III of the United States Constitution, federal courts are limited to adjudicating actual cases or controversies. See Honig v. Doe, 484 U.S. 305, 317 (1988). "In an attempt to give meaning to Article III's case-or-controversy requirement, the courts have developed a series of . . . 'justiciability doctrines,' among which [is] standing[.]" Nat'l Treasury Employees Union v. United States, 101 F.3d 1423, 1427 (D.C. Cir. 1996) (quoting Allen v. Wright, 468 U.S. 737, 750 (1984)). Indeed, "[s]tanding to sue is a doctrine rooted in the traditional understanding of a case or controversy[,] . . . limit[ing] the category of litigants

[4] The plaintiff does not specify what cases she is referring to. Instead, after referencing "every other negative decision" that utilized an "intent-to-book" criteria, the plaintiff states "See, e.g.[,]" without citing any sources for the Court to consider. See Pl.'s Opp'n at 4. As such, the Court is forced to assume that the plaintiff was alluding to the string of cases where, because of her lack of intent to actually book a stay at the property in question, she was denied standing to sue. See [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Colo. [redacted]) ("[redacted] alleged an information injury but did not allege what, if any, 'downstream consequences' she will face from the loss of information. She did not . . . intend[] to use the ORS . . . to book an accessible room."); see also [redacted] v. [redacted], 22 F.4th [redacted], [redacted] (10th Cir. [redacted]); [redacted] v. [redacted], [redacted], [redacted] WL [redacted] (D. Colo. [redacted]); [redacted] v. [redacted], [redacted], [redacted] WL [redacted] (D. Colo. [redacted]).

empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016) (citation omitted). To establish Article III standing, the plaintiff must show (1) "that [s]he has suffered an injury in fact[;] . . . (2) that a causal connection exists between the injury and the conduct at issue, such that the injury is fairly traceable to the challenged conduct; and (3) that it is likely, not merely speculative, that the injury will be redressed by a decision in favor of the plaintiff." Jefferson v. Stinson Morrison Heckler LLP, 249 F. Supp. 3d 76, 80 (D.D.C. 2017) (citing Lujan, 504 U.S. at 560–61).

The defendant's 12(b)(1) motion to dismiss only contests the injury in fact requirement for Article III standing. See generally Def.'s Mem. "To establish [an] injury in fact, a plaintiff must show that . . . [he or she] suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, 578 U.S. at 339 (quoting Lujan, 504 U.S. at 560). Additionally, in an action seeking injunctive relief, "harm in the past . . . is not enough to establish[,] . . . in terms of standing, an injury in fact." Am. Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334, 336 (D.C. Cir. 2003). "[A] party has standing . . . only if [he or she] alleges . . a real and immediate . . . threat of future injury." Nat. Res. Def. Council v. Pena, 147 F.3d 1012, 1022 (D.C. Cir. 1998).

"For an injury to be particularized, it must affect the plaintiff in a personal and individualized way." Spokeo, 578 U.S. at 339 (internal quotation marks omitted) (collecting cases). However, to constitute an injury in fact, that particularized injury must also be concrete. Id. For an injury to be "concrete," it must be "de facto" and actually exist. See id. at 340 (citing Black's Law Dictionary 479 (9th ed. 2009)). "'Concrete' is not, however, necessarily synonymous with 'tangible[,]' . . . [as] intangible injuries can nevertheless be concrete." Id.

In determining whether an intangible harm is concrete enough to constitute an injury in fact, "the judgement of Congress play[s an] important role[]." Id. "Congress may 'elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law.'" Id. at 341 (citing Lujan 504 U.S. at 578). For example, discriminatory treatment is often elevated in this way. See TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2205 (2021) (citing Allen, 468 U.S. at 757 n.22). Indeed, "[c]ourts must afford due respect to Congress'[s] decision to impose a statutory prohibition or obligation on a defendant, and to grant a plaintiff a cause of action to sue over the defendant's violation of that statutory prohibition or obligation." Id. at 2204 (citing Spokeo, 578 U.S. at 339). "But even though Congress may 'elevate' harms that 'exist' in the real world[,] . . . it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." Id. at 2205 (internal quotation marks omitted) (citation omitted).

However, "Article III standing requires a concrete injury even in the context of a statutory violation." Spokeo, 578 U.S. at 341. An "important difference exists between . . . a plaintiff's statutory cause of action to sue a defendant over the defendant's violation of federal law, and . . . a plaintiff's suffering concrete harm because of the defendant's violation of federal law." TransUnion, 141 S. Ct. at 2205. Therefore, an injury in law does not necessarily create injury in fact. See id. "Only those plaintiffs who have been concretely harmed by a defendant's statutory violation may sue that private defendant over that violation[.]" Id. (emphasis omitted).

In this case, the plaintiff alleges two intangible harms stemming from the defendant's statutory violation: first, an informational injury for being "deprived of the information she needed to make a meaningful choice in finding places in which to stay during her trip[,]" and second, a stigmatic injury because the defendant's violation made it "difficult to find hotels in which to stay, severely limited her options, and deprived her of full and equal access to the same goods and services enjoyed by non-disabled individuals[.]" Am. Compl. ¶ 13. The defendant contests the concreteness of these two injuries, and also challenges whether the plaintiff has "demonstrate[d] the 'imminent' future injury required for . . . injunctive relief[.]" Def.'s Mem at 6 (quotation omitted). As such, the Court will proceed with its analysis by determining: (1) whether the plaintiff's informational injury, as alleged, sufficiently constitutes an injury in fact, (2) whether the plaintiff's stigmatic injury, as alleged, sufficiently constitutes an injury in fact, and (3) because the Court ultimately concludes that the plaintiff has successfully alleged a stigmatic injury, whether the plaintiff has alleged the real and immediate threat of future injury needed to support standing for injunctive relief.

1. Informational Injury [Section Omitted]

2. Stigmatic Injury

Having established that the plaintiff's alleged informational injury is insufficient to confer standing, the Court will proceed with its analysis by addressing the plaintiff's contention that she suffered a stigmatic injury. See Am. Compl. ¶ 13. The plaintiff argues that the defendant, by omitting ADA-required accessibility information from its ORS, "contribute[d] to [the p]laintiff['s] sense of isolation and segregation[,] . . . deprive[d her] of the equality of opportunity offered to the general public[,]" id. ¶ 17, and caused her to experience "stigmatic injury and dignitary harm because it was difficult to find hotels in which to stay[,]" id. ¶ 13. In response, the defendant argues that the plaintiff could not have suffered such harms without actually intending to stay at the hotel, stating that the "[p]laintiff, somehow without even visiting [the hotel] or attempting to book a guest room, claims to have suffered 'frustration, increased difficulty, stigmatic injury, and dignitary harm.'" Def.'s Mem. at 5 (quotation omitted).

"'There is no doubt that dignitary harm is cognizable' because 'stigmatic injury is one of the most serious consequences of discrimination.'" [redacted], [redacted] WL [redacted], at [redacted] (quoting Carello v. Aurora Policemen Credit Union, 930 F.3d 830, 833–34 (7th. Cir. 2019)). Indeed, "discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group." Heckler v. Mathews, 465 U.S. 728, 729 (1984); see also Brintley v. Aeroquip Credit Union, 936 F.3d 489, 493–94 (6th Cir. 2019) ("It[is] true that 'dignitary harm' and 'stigmatic injury' might give rise to standing in some settings.").

However, "not all dignitary harms are sufficiently concrete to serve as injuries in fact." Griffin v. Dep't of Labor Fed. Credit Union, 912 F.3d 649, 654 (4th Cir. 2019). "While 'statutes may define what injuries are legally cognizable—including intangible or previously unrecognized harms'—they 'cannot dispense with the injury requirement altogether." [redacted], [redacted] WL [redacted], at [redacted] (quoting [redacted], [redacted] F.3d at [redacted]).

Consequently, "an 'abstract stigmatic injury,' standing alone, [is] not cognizable." Penkoski v. Bowser, 486 F. Supp. 3d 219, 228 (D.D.C. 2020) (quoting Allen, 468 U.S. at 755). A "plaintiff[must] show that they have been 'personally denied equal treatment by the challenged discriminatory conduct,' not just that they feel stigmatized." Penkoski, 486 F. Supp. 3d at 228 (emphasis omitted) (quoting Allen, 468 U.S. at 755); but see [redacted] v. [redacted], [redacted] F.4th [redacted], [redacted] (11th Cir. [redacted]) ("[While] a violation of an antidiscrimination law is not alone sufficient to constitute a concrete injury, . . . the emotional injury that results from [the] illegal discrimination is."). "The stigmatic injury thus requires the identification of some concrete interest with respect to which [a plaintiff is] personally subject to discriminatory treatment." Allen, 468 U.S. at 757 n.22.

Determining the level of concreteness required to support a stigmatic injury under Title III of the ADA "is, ultimately, an unsettled area of standing jurisprudence, with myriad decisions cutting both ways across the country." [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (D. Md. [redacted]). While existing case law does not indicate the precise point at which an interest becomes concrete enough to support a stigmatic injury in fact, "[i]n many cases the . . . question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases." Allen, 468 U.S. at 751–52. Accordingly, to determine whether the plaintiff has identified "some concrete interest" that was harmed by the defendant's alleged discrimination, the Court will proceed by comparing the facts of the current case to others that contain similar details and allegations.[5] See id. at 757 n.22.

First, the plaintiff alleges that she traveled to Washington, D.C., in summer 2021. See Am. Compl. ¶ 13. By visiting the city where the defendant's hotel was located, the plaintiff's allegations are already distinguishable from those in [redacted], where she failed to demonstrate "enough of a concrete interest" that was harmed by the defendant's ADA violation because she had not been to Washington, D.C., and "lack[ed] any allegations that she intend[ed] to visit [Washington, D.C.]" [redacted] WL [redacted], at [redacted]. Additionally, the plaintiff's allegations are distinguishable from those in [redacted] v. [redacted],[6] where she "failed to plead a concrete stigmatic or dignitary [injury]" even after alleging a visit to Eastern Colorado, the general region of the defendant's hotel. [redacted], [redacted] WL [redacted], at [redacted] (D. Colo. [redacted]). The U.S. District Court for the District of Colorado reasoned that "[Eastern Colorado] [wa]s a large swath of Colorado and could encompass numerous different places," and therefore, the plaintiff had "not alleged that she w[ould] or intend[ed] to travel to the location of the defendants' hotel[.]" Id. However, in the current case, the plaintiff traveled through "the specific [city] where [the d]efendants' hotel [was] located"—Washington, D.C. Cf. [redacted] WL

[5] Some of these cases were decided by district courts in other jurisdictions and are not binding on this Court. Nonetheless, due to their factual and legal similarities to the case at hand, as well as the shortage of analogous cases within the D.C. Circuit, this Court finds them instructive.

[6] [redacted], like the case currently before the Court, was stayed during the appeal of another of the plaintiff's suits, [redacted] v. [redacted], [redacted] F.4th [redacted], to the Tenth Circuit. See [redacted] WL [redacted], at [redacted]. When the Tenth Circuit affirmed the dismissal of [redacted] for lack of standing, the plaintiff motioned to file a supplemental complaint in [redacted], see id., just as she did when this Circuit affirmed the dismissal of [redacted], see generally Mot. File Suppl. Compl. However, in [redacted], the court denied her motion to file another complaint because her "proposed supplemental complaint [did] [not] remedy the defects in [her] original pleading." [redacted] WL [redacted], at [redacted].

[redacted], at [redacted] (holding that the plaintiff did not plead a concrete injury because she "d[id] not suggest an intent to visit the specific town where [the d]efendants' hotel [wa]s located").

Second, the plaintiff's intent to return to Washington, D.C., see Am. Compl. ¶ 15, is more concrete than it was in [redacted], [redacted] WL [redacted], at [redacted], and more geographically narrow than her intent to return to "Eastern Colorado" was in [redacted], [redacted] WL [redacted], at [redacted]. In [redacted], the plaintiff's "vague allegations" that she would visit Washington D.C. "as soon as the [COVID-19] crisis [was] over[,]" [redacted] WL [redacted], at [redacted], were too speculative and "undefined" to show standing, id. (citing [redacted], [redacted] WL [redacted], at [redacted]). In the current case, the plaintiff specifically alleges that "she will return to the [ORS] . . . and [Washington, D.C.,] . . . in December 2022," Am. Compl. ¶ 15, and provides a description of her plans to drive through the East Coast, see Statement ¶ 5. Moreover, unlike her plans in [redacted], the plaintiff intends to return to the "specific [city] where [the d]efendants' hotel is located[.]" Cf. [redacted] WL [redacted], at [redacted] (holding that the "[p]laintiff's did not allege that she would visit Byers, Colorado, the site of [the d]efendants' hotel," because she had only alleged that "she w[ould] travel to Eastern Colorado).

Third, unlike the scenario in [redacted] where she "visited the [defendant's ORS] to see if the [defendant] complied with the law, and nothing more[,]" [redacted] WL [redacted], at [redacted] (internal quotations omitted) (quoting [redacted], [redacted] F.3d at [redacted]), the plaintiff now alleges that she visited the defendant's ORS to "ascertain whether she would be able to stay at [the hotel,]" Am. Compl. ¶ 10. See also [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (W.D. Tex. [redacted]) (quoting Brintley v. Aeroquip Credit Union, 936 F.3d 489, 494 (6th Cir. 2019)) ("[M]erely browsing the web, without more, is[not] enough to satisfy Article III."), report and recommendation adopted sub nom., [redacted], [redacted] WL [redacted] (W.D. Tex. [redacted]), aff'd sub nom., [redacted] Fed. App'x. [redacted] (5th Cir. [redacted]); [redacted], [redacted] F.4th at [redacted] ("[The plaintiff] has not alleged that she has any interest in using the . . . [defendant's] ORS beyond bringing [a] lawsuit."). Indeed, the plaintiff was not simply "surfing various websites in her home to check for ADA compliance[,]" [redacted], [redacted] WL [redacted], at [redacted], but rather, "intend[ed] to use the information to evaluate places to stay for a future trip[,]" [redacted] v. [redacted], [redacted], [redacted] WL [redacted], at [redacted] (W.D. Wis. [redacted]).

As such, the plaintiff did not merely "feel stigmatized" by the defendant's alleged ADA violation. See Penkoski, 486 F. Supp. 3d at 228 (emphasis removed) (citation omitted). Although she did experience "frustration and humiliation[,]" she contends that the defendant's noncompliant ORS harmed her in a more concrete way by "depriv[ing her of] the same advantages, privileges, goods, services and benefits readily available to the general public." Am. Compl. ¶ 17. Moreover, the plaintiff alleges that the defendant's ADA violation impaired her ability to "ascertain[] whether or not she would be able to stay at the hotel during her [upcoming] trip[,]" and made it "difficult to find hotels in which to stay." Id. ¶ 10. Indeed, when she traveled through Washington, D.C., "and needed a hotel to stay in[,]" she claims that "[the d]efendant's discriminatory ORS operated as a barrier . . . and deprived [her] of the ability to book an accessible room in the same manner as . . . non-disabled persons." Pl.'s Opp'n at 4. The plaintiff also states that it was "extremely difficult to find hotels with accessible rooms" and that "there were occasions when [she] had to sleep in [her] car." Statement ¶ 4. Thus, the

plaintiff's alleged stigmatic injury is not an "abstract" one that "stand[s] alone[.]" Penkoski, 486 F. Supp. 3d at 228 (quoting Allen, 468 U.S. at 755). Rather, it is accompanied by allegations of real-world harm to her ability to assess hotel options and book accessible rooms. Cf. [redacted], [redacted] WL [redacted], at [redacted] (conferring standing to a plaintiff as a result of the dignitary harm that stemmed from being unable to "evaluate places to stay for a future trip").

Therefore, the Court concludes that the plaintiff's inability to "ascertain[] whether or not she would be able to stay at the [defendant's] hotel[,]" Am. Compl. ¶ 10, combined with her visit to the specific city where the defendant's hotel was located, see [redacted], [redacted] WL [redacted]; [redacted], [redacted] WL [redacted], as well as her need to stay at a hotel in that specific city, see Am. Compl. ¶ 10, collectively constitute "some concrete interest" that was harmed by the defendant's ADA violation,[7] Allen, 468 U.S. at 757 n.22. The plaintiff's summer 2021 trip through Washington, D.C., created a particularized "connection between [the] plaintiff and [the] defendant . . . [that] separate[d] her from the general population visiting the [ORS,]" and as a result, the plaintiff suffered a concrete and particularized stigmatic injury in fact. [redacted], [redacted] WL [redacted], at [redacted]. Accordingly, the Court concludes that the "concrete interest" needed to support a stigmatic injury under the ADA does not necessarily require an intent to book. Allen, 468 U.S. at 757 n.22. As such, the plaintiff has established a stigmatic injury in fact.

3. Future Injury [Section Omitted]

B. The Defendant's 12(b)(6) Motion to Dismiss [Section Omitted]

IV. CONCLUSION

For the foregoing reasons, the Court concludes that it must grant the defendant's motion to dismiss to the extent that it seeks dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) but deny it in all other respects.

SO ORDERED this ___ day of ___, 2022.[8]

REGGIE B. WALTON
United States District Judge

[7] Admittedly, the plaintiff did not specifically visit the defendant's hotel or intend to book an accessible room there. See Def.'s Mem. at 5. However, the defendant's ADA violation "served as a barrier to this very event[,]" Pl.'s Opp'n at 2–3, preventing the plaintiff from ascertaining "whether the . . . hotel [was] accessible" enough for her specific needs in the first place. Am. Compl. ¶ 17. Moreover, the ADA Regulation specifically requires that hotel owners "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs[.]" 28 C.F.R. § 36.302(e)(ii). Therefore, the Court concludes that an intent to book is not necessary for establishing a stigmatic injury.

[8] The Court will contemporaneously issue an Order consistent with this Memorandum Opinion.

Applicant Details

First Name	**Andrew**
Middle Initial	**J**
Last Name	**Yablonsky**
Citizenship Status	**U. S. Citizen**
Email Address	**ajy17@georgetown.edu**
Address	**Address** Street **450 K St. NW** City **Washington** State/Territory **District of Columbia** Zip **20001** Country **United States**
Contact Phone Number	**7634771651**

Applicant Education

BA/BS From	**Columbia University**
Date of BA/BS	**May 2020**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**June 6, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**American Criminal Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Barristers' Council, ADR Advocacy Division**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Fifield, Kathryn
kathryn.fifield@usdoj.gov
Perlin, Jonah
jep82@georgetown.edu
Gornstein, Irving
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable Juan R. Sánchez
U.S. District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market St.
Philadelphia, PA 19106

Dear Judge Sánchez:

I am a rising third-year law student at Georgetown University Law Center, and I write to apply for a clerkship in your chambers for the 2024–25 term.

The opportunity to move to a part of the country where I have never lived to serve in your chambers would be a privilege. I am eager to sharpen my legal writing abilities and gain practical litigation experience following my graduation from law school next year, and I hope to do so as a clerk.

I have participated in an array of legal experiences while in law school that will enable me to excel as a law clerk. Last fall, I interned for Judge Rudolph Contreras at the District Court for the District of Columbia, where I cite-checked memoranda and developed my legal research and writing skills. Observing the inner workings of the judiciary cultivated my appreciation for the judicial system and a desire to be a part of the institution. And as an intern at the Public Integrity Section of the Department of Justice last semester, I drafted memoranda for attorneys prosecuting public corruption cases across the country.

In addition to serving as a journal editor, I am also looking forward to publishing a Note next spring that discusses recent constitutional developments in the nondelegation doctrine, which received the top grade in a seminar taught by D.C. Circuit Judge Nina Pillard and Professor Irving Gornstein.

Thank you for your time and consideration. I am available at ajy17@georgetown.edu or (763) 477-1651. My resume, references, transcripts, writing sample, and letters of recommendation are included for your review.

Sincerely,

Andrew J. Yablonsky

Andrew J. Yablonsky

ajy17@georgetown.edu • (763) 477-1651
450 K St. NW, Apt. 418, Washington, DC 20001

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER — Washington, DC
GPA: 3.78 — J.D. expected May 2024
Journal: *American Criminal Law Review*: Articles Development Editor; Steering Committee Member
Honors: Top 15% of 1L class
Best paper in the Federal Practice Seminar (Fall 2022)
Best exam in Constitutional Law I (Fall 2021)
Barristers' Council, ADR Advocacy Division
Publications: Note, *Congressional "Activation" of Executive Authority and the Nondelegation Doctrine*, 36 REGENT U. L. REV. ___ (forthcoming Spring 2024)
Foreign Corrupt Practices Act, 60 AM. CRIM. L. REV. 875 (2023)
Activities: Domestic Violence Clinic (forthcoming Spring 2024)
Research Assistant, Professor Jonah E. Perlin (Spring 2023)
OutLaw (LGBTQ student association); Jewish Law Students Association

COLUMBIA UNIVERSITY — New York, NY
B.A., *magna cum laude*, American Studies — May 2020
Honors: Honor Society; Dean's List
Thesis: *Intimacy, Injury, and Identity: The Specter of AIDS in Two Contemporary American Films*

JEWISH THEOLOGICAL SEMINARY OF AMERICA — New York, NY
B.A., *magna cum laude*, Modern Jewish Studies (dual-degree with Columbia University) — May 2020
Honors: Award for unusual academic achievement; Dean's List
Study Abroad: Lorenzo de' Medici International Institute, Florence, Italy, Summer 2019

EXPERIENCE

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP — New York, NY
Summer Associate — Summer 2023

PUBLIC INTEGRITY SECTION, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE — Washington, DC
Legal Intern — Spring 2023
- Researched and drafted memoranda relating to pending motions in criminal cases
- Attended hearings and trials in ongoing matters

HON. RUDOLPH CONTRERAS, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA — Washington, DC
Legal Intern — Fall 2022
- Drafted a memorandum detailing the law of motions for judgment on the pleadings
- Reviewed and cite-checked drafts of orders and memoranda in civil and criminal cases

AKIN GUMP STRAUSS HAUER & FELD LLP — New York, NY
Strauss Diversity & Inclusion Scholar (1L Summer Associate) — Summer 2022
- Analyzed bankruptcy filings to determine acceptable metrics for a Key Employee Incentive Plan
- Reviewed a Lexis treatise on SEC enforcement and updated over 200 citations

OFFICE OF GENERAL COUNSEL, MEMORIAL SLOAN KETTERING CANCER CENTER — New York, NY
Legal Intern — Summer 2022
- Wrote a memorandum discussing a novel California law regulating online charitable fundraising
- Analyzed a proposed amendment to a contract to determine any changes in legal obligations

NEW YORK CITY EMERGENCY MANAGEMENT DEPARTMENT — New York, NY
AmeriCorps Community Engagement Fellow — 2020 – 2021

ADDITIONAL INFORMATION

Other: Wedding officiant, DoorDash food delivery driver, summer camp counselor, election judge
Interests: Independent film screenings, Italian cooking, following national news

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References

Professor Jonah E. Perlin
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Legal writing professor for two semesters; research supervisor in Spring 2023

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Supervisor at DOJ internship in Spring 2023

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Seminar professor in Fall 2022

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Constitutional Law professor in Fall 2021

Record of: Andrew J. Yablonsky
GUID: 825470976

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	001	94	Civil Procedure Aderson Francois	4.00	A-	14.68	
LAWJ	002	41	Contracts Gregory Klass	4.00	A-	14.68	
LAWJ	004	41	Constitutional Law I: The Federal System Josh Chafetz	3.00	A	12.00	
LAWJ	005	41	Legal Practice: Writing and Analysis Jonah Perlin	2.00	IP	0.00	

	EHrs	QHrs	QPts	GPA
Current	11.00	11.00	41.36	3.76
Cumulative	11.00	11.00	41.36	3.76

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	003	94	Criminal Justice Christy Lopez	4.00	A	16.00	
LAWJ	005	41	Legal Practice: Writing and Analysis Jonah Perlin	4.00	A-	14.68	
LAWJ	007	94	Property Madhavi Sunder	4.00	A-	14.68	
LAWJ	008	41	Torts John Hasnas	4.00	A	16.00	
LAWJ	1349	50	Administrative Law Lisa Heinzerling	3.00	B+	9.99	

Dean's List 2021-2022

	EHrs	QHrs	QPts	GPA
Current	19.00	19.00	71.35	3.76
Annual	30.00	30.00	112.71	3.76
Cumulative	30.00	30.00	112.71	3.76

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	121	09	Corporations Donald Langevoort	4.00	A	16.00	
LAWJ	1491	03	Externship I Seminar (J.D. Externship Program) Alexander White		NG		
LAWJ	1491	125	~Seminar Alexander White	1.00	A	4.00	
LAWJ	1491	127	~Fieldwork 3cr Alexander White	3.00	P	0.00	
LAWJ	1631	05	Federal Practice Seminar: Contemporary Issues Irving Gornstein	2.00	A+	8.66	
LAWJ	1724	08	Conservative Legal and Political Thought Seminar Lama Abu-Odeh	3.00	A-	11.01	

In Progress:

	EHrs	QHrs	QPts	GPA
Current	13.00	10.00	39.67	3.97
Cumulative	43.00	40.00	152.38	3.81

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	1492	14	Externship II Seminar (J.D. Externship Program)		NG		
LAWJ	1492	83	~Seminar	1.00	A-	3.67	
LAWJ	1492	85	~Fieldwork 3cr	3.00	P	0.00	
LAWJ	178	05	Federal Courts and the Federal System	3.00	A	12.00	
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties	4.00	B+	13.32	
LAWJ	396	05	Securities Regulation	4.00	P	0.00	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	15.00	8.00	28.99	3.62
Annual	28.00	18.00	68.66	3.81
Cumulative	58.00	48.00	181.37	3.78

End of Juris Doctor Record

April 13, 2023

Dear Judge:

I first met Andrew Yablonsky (whom I know as AJ) more than ten years ago, when he was a ninth-grade participant in Minnesota Youth in Government (YIG), a program run by the YMCA. YIG is, among other things, a four-day conference at which students participate in a mock state government, playing the role of lawyers, legislators, and elected state legislative, executive, and judicial leaders. I participated as a high school student and I have been an adult volunteer with the program every year since. Throughout those years, I've worked directly with nearly a thousand students. A handful of them stand out in my memory, but none more than AJ.

When AJ was in ninth grade, he ran for an elected leadership position, and lost. The next year, he was appointed to a secondary position by the young woman to whom he lost the election. Throughout the four-day conference, this young woman had a difficult time handling the responsibilities of her position. AJ quietly helped her perform her duties, taking on some of them himself, all while reassuring her and deferring to her leadership in front of others. I remember thinking that this was an extraordinary display of compassion and selflessness, especially for a tenth grader. AJ embodied an ethic that we emphasize at YIG—"servant leadership." This was not something AJ needed to be taught; for him, it seemed instinctive.

I've seen this ethic continue to define AJ every year since I met him. In his senior year, AJ was elected from 1,500 YIG participants as the Youth Governor. He stands out even within this exclusive group of Youth Governors for professionalism and maturity that exceeded his years. After graduating from high school, like me, AJ has returned to YIG as a volunteer nearly every year. In that capacity, I've had the opportunity to get to know him as an adult, as volunteers—particularly the small group of us called "program specialists"—work closely together on youth and program development. In addition to the impressive qualities he displayed as a student, AJ is funny, clever, and a joy to spend time with. Moreover, I know from personal experience that continued service to this program can come at significant personal expense and involves many volunteer hours outside of the four-day conference. There are very few program alumni who continue to serve more than one or two years, let alone seven (which, I believe, is the number of years AJ has been an adult volunteer as of 2023). This speaks to AJ's commitment to civic education and YIG's mission, which is, "Democracy must be learned by each generation."

Naturally, I was thrilled when AJ decided to apply for a legal internship with the U.S. Department of Justice's Public Integrity Section (PIN), where I am a Trial Attorney and one of the intern supervisors. PIN's internship program is competitive and rigorous. We select law students who have demonstrated exemplary legal writing and research skills, are teachable and motivated, have high EQ and good communication skills, and come with excellent references. I was pleased but not surprised to find that AJ performed very well in law school and immediately thought he was a great candidate for our office. Due to our personal connection, I recused

myself from AJ's application and hiring process. He impressed my colleagues and was hired from among many applicants as part of our Spring 2023 internship class.

AJ's work continues to impress. He is diligent, efficient, and curious. AJ has worked on a variety of projects since joining our office. Research and writing is the bread and butter of our internship projects, as our office often deals with obscure or novel legal questions, and we practice nationwide, so we are frequently asking interns to analyze law across multiple jurisdictions. We also rely on interns for first drafts of portions or sometimes entire court filings. AJ has exhibited strength in these areas, particularly in grasping nuanced legal issues. While some may discount such skill as elementary, we regularly see interns who struggle see the bigger picture and produce work product that is tailored to the assigning attorney's needs. As a former law clerk, I know that this skill is foundational and essential when it comes to addressing the complex legal questions that will come before the Court.

At bottom, the word that comes to mind when I think about AJ is "confidence." He has the kind of confidence in himself that will allow him to continue to grow and stay curious without worrying about whether asking questions will impugn his competence. He has the kind of confidence that allows him to act like he belongs in a professional environment that can be intimidating to interns. Importantly, I have utmost confidence in him. I trust that AJ could excel in any environment. I trust that I could give him unvarnished feedback and that he would engage with it in a mature and constructive manner. I trust AJ's opinion, and I have for many years. I am proud, at this stage of knowing him, to call him a friend and, more recently, a colleague. I am proud to recommend him as a law clerk to any judge.

Please reach out if I can be of any further assistance.

Respectfully,

Kathryn E. Fifield
Trial Attorney
Public Integrity Section
U.S. Department of Justice, Crim. Div.
1301 New York Ave. NW
Washington, D.C. 20530
Kathryn.fifield@usdoj.gov
(202) 320-0048

GEORGETOWN LAW

April 12, 2023

Dear Judge:

I write to recommend my student Andrew Yablonsky for a clerkship in your chambers. I know Andrew well from my work with him during three of the past four semesters here at Georgetown Law. Based on these experiences and as a former law clerk myself, I am 100% confident that he will make a stellar law clerk and I recommend him without hesitation or reservation.

Last year, Andrew was my student in Georgetown's year-long Legal Practice course. In this class, we focused both on legal research and writing as well as on other professional skills such as supervisor presentations and oral advocacy. Given his extensive pre-law school writing experience as a dual degree candidate at Columbia University and the Jewish Theological Seminary, I was not entirely surprised that he came into my classroom as a strong writer and immediately thrived even in a new genre of writing. He was always prepared for class and, more importantly, was never afraid to answer (or ask) a question in a way that moved the discussion forward. In group work, he always stood out as a leader and consistently did great work but also elevated the work of his peers.

What was even more impressive about Andrew's work in my class was how much he grew over the course of the year as a result of his focus on becoming a skilled legal researcher and strategic legal writer. He consistently showed a commitment and drive to constantly improve in the craft of legal argument that frankly you cannot teach. He never shied away from hard tasks, was not afraid to take risks as part of the learning process, and was self-directed in achieving his goal of becoming a better writer not just for the grade but because he understands that legal writing is a keystone skill of our profession. He demonstrated skill at learning from and integrating written comments from me. That said, he was not afraid to ask questions, but he always tried to find the answer himself first, and when he did ask questions, he was well prepared, thoughtful, and able to ask the right follow-ups. I cannot remember Andrew making the same mistake twice—a skill that I am confident will serve him well as your law clerk.

600 New Jersey Avenue, NW Washington, DC 20001-2075
PHONE 202-662-9000 FAX 202-662-9444

Andrew's skills extend far beyond the written word. He is just as comfortable conveying legal analysis orally in an adversarial venue like oral argument as he is in a presentation to a supervisor. Andrew is very comfortable speaking in front of a groups (large or small) given his easy-going demeanor and outgoing personality combined with his ability to explain the law in plain and simple terms, his ability to listen and think on his feet, and his willingness to answer hard questions. Despite being a natural strength, Andrew has also developed these oral presentation skills in a host of summer internships, in-semester externships, and as a member of Georgetown's Moot Court Team, Alternative Dispute Resolution Section.

Given my work with Andrew last year and his talents, I was overjoyed when he asked me if I was looking for a Research Assistant this semester. I jumped at the opportunity to hire him. As impressed as I was with Andrew as a 1L, I have been that much more impressed with his work as my RA. Despite a busy schedule including an externship at the Department of Justice, moot court competitions, and challenging courses he found 10-15 hours per week to support my scholarship and teaching. He's been one of the top-3 RAs I've had to date. The projects I have asked him to complete have spanned the gamut from hypertechncial work like editing Bluebook citations for a soon-to-be-published article to big picture thinking in the form a well-researched, well-organized, and well-written memo on the foundational justifications for a lawyer's duty of confidentiality. No matter the task, his work product has exceeded my expectations. He also completed several research projects mapping areas of the law related to in-class writing assignments in ways that were comprehensive, actionable, and well-synthesized on very short timelines. I even shared this research with a colleague who told me how impressed they were with the quality and ease-of-use of the work product. I know how important it is to be able to trust a law clerk to prepare high quality and legally accurate work product and Andrew has demonstrated this ability and attention to detail time and again.

As my RA, Andrew has also displayed a number of the so-called soft skills that I know will help him stand out as a law clerk that you will come to trust and enjoy working with. He is extremely responsive, a great listener, a strategic thinker, and an empathetic soul. He is also intellectually curious and unafraid to go down a rabbit hole on a related topic or suggest another path of inquiry based on a specific assignment. In this way, he "owns" the case and displays great judgment. I've also seen his judgement and process-oriented nature in the career-related decision-making process. For example, whereas most students choose what law firms to work at over the summer based on prestige or a big-name partner, Andrew dug far deeper. Faced with a daunting choice among top law firms, he came to me and others to learn more about his options with the singular goal of finding out which firm would give him the best depth and breadth of experience from day one.

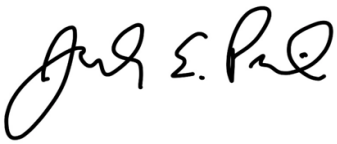
Honestly, any decision would have been a good one—he was choosing between fantastic firms—but what impressed me was his careful and mature process for making the decision. He has taken the same approach to applying for clerkships in locations that matter to him and on courts and with judges that will help him grow as a litigator. He is applying to clerk for all the right reasons and I have been so proud of his approach to this sometimes-opaque process.

Not to put too fine a point on it, but Andrew's done it all at Georgetown and he has done it all well (and with a smile). In addition to serving as my RA, Andrew has taken writing intensive courses including challenging seminars as well as larger exam-based lecture classes and received an A+, A, or A- in almost all of them (a remarkable level of quality and consistency). He has externed *both* semesters of his 2L year (first for Judge Contreras of the United States District Court of the District of Columbia and this semester for the Public Integrity Section of the DOJ in an effort to better prepare himself for a career in litigation). He has served in a leadership role on the *American Criminal Law Review*. He has taken on challenging summer internships. And he has participated on the Moot Court team and in other student groups. I am not exactly sure how he does it all (or at least how he does it all so well) but it is impressive and speaks to his ability to take on more without complaining or allowing the quality of his work to suffer.

Finally, beyond his professional skills and aspirations, Andrew is an absolute joy to be around. He is the kind of student that builds relationships naturally with both his peers and his professors alike. He knows how to read a room. He is incredibly responsive. He is a good listener. He has an interesting range of past experience and hobbies. He is well-rounded, relaxed, and calm under pressure. He is just one of those people you *want* to spend time with. You could easily have lunch with him every workday and never have to cover the same topic of conversation twice. I know from my own clerkship experience how important "fit" is for any law clerk and Andrew's dedicated nature but easy-going affect will allow him to easily fit in any group. Andrew will not just be your law clerk for a term, he'll be the clerk that you want to keep in touch with and have lunch with as the years go on.

I hope you'll take the time to meet with him because if you do I know you'll hire him on the spot. I am happy to discuss his candidacy further by phone (703.801.4685) or by e-mail (jep82@georgetown.edu).

Respectfully,



Jonah E. Perlin
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June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a Professor Law at Georgetown Law Center. I am also Executive Director of the Supreme Court Institute, and I have argued 38 cases in the Supreme Court.

Andrew Yablonsky was a student in the Current Issues Seminar I co-teach with Judge Pillard. Based on that experience, I highly recommend Andrew for a clerkship.

My Current Issues Seminar typically draws some on the strongest students at Georgetown Law. In that highly competitive environment, Andrew was one of the two top students. Andrew's contributions to class discussion were exceptional. His final paper was even better.

Andrew selected as the topic for his final paper the Fifth Circuit's holding in Jarkesy that Congress's delegation of authority to the SEC to select an administrative or judicial forum violates the non-delegation doctrine. Andrew persuasively argued that when Congress activates prosecutorial discretion through a delegation, there is no requirement that it do so through an intelligible principle. He further argued that the decision whether to bring a case in an administrative or a judicial forum falls within that activation principle. Judge Pillard and I agreed that Andrew's paper was outstanding on every level and we awarded Andrew an A+ in the class.

Andrew will also be well prepared for a clerkship. He has interned for United States District Court Judge Contreras. He is on the Barristers' Council, which represents Georgetown at national and international moot court competitions. He is a Research Assistant to Professor Perlin. He has a 3.81 average, which puts him in the top 15% of the class. And he will work as a summer associate for Skadden in New York.

In my interactions with Andrew, he has demonstrated exceptional maturity and intellectual curiosity. And he is very easy to get along with. In sum, Andrew will make an excellent addition to any chambers.

Sincerely,

Irv Gornstein

Irving Gornstein - ilg@georgetown.edu

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Writing Sample

I submitted the following appellate brief as my final exam for *Legal Practice: Writing and Analysis* in Spring 2022. No one else has edited the brief, which I have updated to be consistent with my current legal writing skills. The brief, written on behalf of the United States, argues that the district court correctly held that a law enforcement officer had reasonable suspicion to stop a suspect under Supreme Court and Second Circuit precedent. Pursuant to the exam instructions, the necessary facts come from the district court opinion (e.g., "Op. 5") rather than a Joint Appendix.

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STATEMENT OF THE ISSUES

1. Whether the district court correctly held that Officer Maisel had reasonable suspicion to stop the defendant where an informant provided her name and email address and knew the defendant?
2. Whether the district court correctly held that Officer Maisel had reasonable suspicion to stop the defendant where the Officer corroborated an informant's tip that alleged the defendant may use a firearm?

STATEMENT OF THE CASE

On June 17, 2021, Officer Ethan Maisel of the Burlington Vermont Police Department ("BVPD") received an informant's emailed tip stating, "This is urgent." Op. 5. Officer Maisel soon discovered Leonard Bruce, the defendant, in possession of cocaine in violation of federal law. *Id.* at 7. The defendant moved to suppress evidence of the cocaine on the grounds that Officer Maisel lacked reasonable suspicion to conduct an investigatory stop of the defendant. *Id.* The district court denied the motion, and the defendant appealed to this Court. *Id.*

Just after receiving the tip through the BVPD's Online Tip Portal at 10:30 AM, Officer Maisel began to investigate. *Id.* at 5–6. He learned that the tip originated from a "Susie Myerson" who could be contacted at "susiemyerson1950@gmail.com." *Id.* at 5. He reached out to the email that she provided but received no answer. *Id.* at 6. Upon searching the Burlington Resident Database, Officer Maisel found a "Susan Myerson." *Id.*

In her tip, Ms. Myerson alleged that a man named "Lenny Bruce" was driving toward the Oakledge Park area of Burlington with a firearm that she was "afraid he might use." *Id.* at 5. Ms. Myerson knew the defendant because they "both attended the University of Vermont and later worked together in business operations at Ben & Jerry's headquarters." *Id.* She encountered the defendant on June 17 when entering a local coffee shop just fifteen minutes before submitting her tip. *Id.* at 6. She wrote that he looked "REALLY angry" and "muttered something about how this was the 'last straw' and that he had purchased a gun to 'convince Mei and Joel to stop messing around.'" *Id.* In her tip, Ms. Myerson described how the defendant had previously mentioned being upset with his cousin, Mei, and her husband, Joel, for failing to pay back the defendant money that he loaned them to buy a house. *Id.* This led Ms. Myerson to document in the tip her worry that the defendant would use his gun. *Id.*

Ms. Myerson then saw the defendant enter his vehicle and drive toward Oakledge Park. *Id.* While Ms. Myerson could not remember the exact color of the vehicle, she thought it may be gray or silver. *Id.* She also noted that the vehicle had a Ben & Jerry's bumper sticker and a University of Vermont sticker in the window. *Id.*

Soon after receiving the tip, Officer Maisel observed a white station wagon enter Oakledge Park with a Ben & Jerry's bumper sticker and a University of Vermont sticker in the window. *Id.* While Officer Maisel did not observe the driver violate any laws or see a firearm, he determined that the driver could be the man

described by Ms. Myerson and pulled over the vehicle to conduct an investigatory stop. *Id.* When he approached the vehicle, Officer Maisel noticed a bag of white powder on the floor, which the defendant admitted was cocaine. *Id.* at 7. Officer Maisel then arrested the defendant. *Id.*

STANDARD OF REVIEW

This Court must review de novo the district court's finding that reasonable suspicion existed to conduct an investigatory stop under the Fourth Amendment. *See Ornelas v. United States*, 517 U.S. 690, 699 (1996).

ARGUMENT

This Court should affirm the district court's denial of the defendant's motion to suppress because the district court correctly held that law enforcement's stop of the defendant comported with the Fourth Amendment.

The Fourth Amendment's protection "against unreasonable searches and seizures" allows law enforcement to conduct a brief investigatory stop of a suspect where there is reasonable suspicion that he is engaged in criminal activity. *See* U.S. Const. amend. IV; *Terry v. Ohio*, 392 U.S. 1, 30 (1968) ("[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search . . . ."). To justify such an intrusion, law enforcement "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. But the evidence

required "need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." *United States v. Arvizu*, 534 U.S. 266, 274 (2002). Courts apply a totality of the circumstances test to determine whether reasonable suspicion exists. *See, e.g.*, *United States v. Sokolow*, 490 U.S. 1, 8 (1989).

There are two matters relevant to the reasonable suspicion analysis of the stop of the defendant: 1) the tip that Officer Maisel received from an informant alleging that a suspect may use a firearm and 2) Officer Maisel's corroboration of that tip. In both instances, the law supports affirming the district court's denial of the defendant's motion to suppress.

I. Ms. Myerson's tip provided Officer Maisel with reasonable suspicion to stop the defendant.

An informant's tip that exhibits sufficient "indicia of reliability" provides law enforcement with reasonable suspicion to conduct an investigatory stop. *See Alabama v. White*, 496 U.S. 325, 326–27 (1990); *United States v. Elmore*, 482 F.3d 172, 179 (2d Cir. 2007) (discussing circumstances where anonymous tips create reasonable suspicion). Indicia of reliability include an informant's "basis of knowledge" and "veracity." *Compare White*, 496 U.S. at 328–29 (explaining that an informant's basis of knowledge and veracity are "relevant" factors to the reasonable suspicion inquiry) *with United States v. Harrell*, 268 F.3d 141, 150 (2d Cir. 2001) (Meskill, J., concurring) (arguing that a tip with evidence of the informant's basis of knowledge and veracity exhibits sufficient indicia of reliability) *and United States v. Bold*, 19 F.3d 99, 103 (2d Cir. 1994) (explaining that a tip without evidence of an

informant's basis of knowledge or veracity lacks sufficient indicia of reliability). In addition, "a deficiency in one [indicium] may be compensated for" by another. *Illinois v. Gates*, 462 U.S. 213, 233 (1983). Allowing law enforcement to rely on anonymous informants promotes crime prevention and the safety of officers and the community. *See, e.g.*, *Adams v. Williams*, 407 U.S. 143, 147 (1972) ("[T]he subtleties of the hearsay rule should not thwart an appropriate police response.").

A. Ms. Myerson knew the defendant well and heard him threaten to use his firearm.

A tip is more likely to establish sufficient indicia of reliability where an informant possesses sufficient "basis of knowledge." *See White*, 496 U.S. at 328. An informant demonstrates her basis of knowledge by showing how she learned the information alleged in the tip. *See United States v. Elmore*, 482 F.3d 172, 179 (2d Cir. 2007). Personally knowing a perpetrator and speaking with him about his criminal behavior are ways to establish one's basis of knowledge. *See id.* at 183; *see also United States v. Steppello*, 664 F.3d 359, 361–66 (2d Cir. 2011) (holding that an informant who knew a defendant demonstrated sufficient indicia of reliability).

In *Steppello*, an informant possessed sufficient "basis of knowledge" because he knew the defendant for four years. *See* 664 F.3d at 361. During this period, the informant purchased cocaine from the defendant every two weeks. *Id.* They spoke about their transactions over the phone; when the informant called the defendant and asked, "Are you good?" the defendant then delivered the cocaine. *Id.*

In her tip, Ms. Myerson described knowing the defendant because they attended college at the University of Vermont at the same time and later worked

together at Ben & Jerry's just like the informant and defendant in *Steppello* knew each other for four years. Op. 5. And while Ms. Myerson did not participate in criminal activity like the informant in *Steppello* bought cocaine, Ms. Myerson heard the defendant speak about criminal activity when he said that he bought a gun to "convince" debtors "to stop messing around" like the informant and defendant in *Steppello* initiated their transactions over the phone. *Id.* at 6. Accordingly, Ms. Myerson demonstrated sufficient "basis of knowledge" when she heard the defendant speak about using a firearm.

B. Ms. Myerson included her name and email address with her tip.

A tip is more likely to establish sufficient indicia of reliability where an informant sufficiently demonstrates the "veracity" of her tip. *See Elmore*, 482 F.3d at 179–83; *United States v. Wagner*, 989 F.2d 69, 73 (2d Cir. 1993) (discussing the significance of a tip's veracity to the reasonable suspicion analysis). A tip's veracity is a measure of the likelihood that the informant is telling the truth. *See Wagner*, 989 F.2d at 73. Knowing an informant's identity generally allows law enforcement to presume the veracity of her tip because her "reputation can be assessed and . . . [she] can be held responsible if her allegations turn out to be fabricated." *J.L.*, 529 U.S. 266, 270 (2000); *see also Elmore*, 482 F.3d at 180 ("The veracity of identified private citizen informants . . . is generally presumed . . . ."); *United States v. Freeman*, 735 F.3d 92, 98 (2d Cir. 2013) ("Information from a known informant can be assessed for reliability in a way that information from an unknown one simply

cannot."); *United States v. Rollins*, 522 F.2d 160, 164 (2d Cir. 1975) (holding that citizens' tips have a "peculiar likelihood of accuracy").

In *J.L.*, police lacked reasonable suspicion to stop a suspect because the tip's veracity could not be shown. *See* 529 U.S. at 271. In that case, an anonymous caller alleged that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. No audio recording of the tip existed, and police knew nothing about the informant's identity. *Id.* When officers went to the bus stop, they encountered three men, one of whom matched the anonymous caller's description. *Id.* But officers had no evidence that the men engaged in illegal activity other than from the "bare report of an unknown, unaccountable informant." *Id.* at 271.

In *Elmore*, reasonable suspicion existed because the informant provided enough information about her identity to demonstrate her veracity. *See* 482 F.3d at 183. Police received a tip alleging that a man with firearms may "do harm to somebody." *Id.* at 175. A woman who identified herself as "Dorothy Mazza" provided the tip in a series of phone calls. *Id.* She also shared her home and cell phone numbers with police. *Id.* An officer located, but did not visit, an address registered to a "Dorothy Mazza." *Id.* He also did not check if the phone numbers used to make the calls were registered in her name. *Id.* at 176.

Ms. Myerson's tip is not like the tip in *J.L.* because she provided her name and an email address unlike the caller in *J.L.* who gave the police no identifying information. Op. 5. In addition, because Ms. Myerson submitted her tip via the

BVPD's Online Tip Portal, the tip was "recorded" while the tip in *J.L.* was not. *Id.* Ms. Myerson's tip is more like the tip in *Elmore* because Ms. Myerson identified herself by a first and last name like "Dorothy Mazza" and provided an email address like Mazza provided two phone numbers. *Id.* While Officer Maisel found a "Susan Myerson" instead of a "Susie Myerson" in the Burlington Resident Database, he attempted to contact the informant unlike the officer who did not attempt to verify Mazza's address. *Id.* at 6. Allowing officers to rely on informants like Ms. Myerson facilitates the efficient apprehension of criminals while ensuring those who submit false tips are held accountable. Because Ms. Myerson provided her name and email, her tip is more like the tip in *Elmore* than the one in *J.L.*, which sufficiently establishes Ms. Myerson's veracity.

II. Officer Maisel corroborated the informant's tip when he saw a man driving a vehicle with distinctive stickers enter the park.

Sufficiently corroborating an informant's tip provides law enforcement with reasonable suspicion to conduct an investigatory stop. *See White*, 496 U.S. at 331; *Elmore*, 482 F.3d at 180 (holding that "a sufficient degree of corroboration" of a tip is all that is necessary to find reasonable suspicion). When an officer corroborates some elements of an informant's tip, it is more likely that "the remaining, unverified information is also true." *See White*, 496 U.S. at 331–32; *Illinois v. Gates*, 462 U.S. 213, 243–45 (1983) (discussing the significance of police corroboration of an informant's tip). A tip regarding an "ongoing emergency" requires less corroboration than one alleging "general criminality." *United States v. Simmons*, 560 F.3d 98, 105 (2d Cir. 2009). Although there is no "firearm exception"

to the reasonable suspicion requirement, a tip reporting an individual threatening to use a firearm constitutes an "ongoing emergency" while simply possessing a firearm suggests "general criminality." *See J.L.*, 529 U.S. at 272; *Simmons*, 560 F.3d at 105 ("This approach recognizes the need for police to act on reports of an emergency situation without delay . . . .").

In *White*, officers had reasonable suspicion to conduct an investigatory stop because they corroborated sufficient aspects of an informant's tip. 496 U.S. at 332. Officers received an anonymous tip that alleged a woman in possession of cocaine would leave an apartment building at a particular time in a brown station wagon with a broken taillight. *Id.* at 327. The informant claimed that the woman intended to drive to a local motel. *Id.* At the time alleged in the tip, officers saw a woman emerge from the apartment building, enter a brown station wagon with a broken taillight, and drive toward the motel. *Id.* After stopping the vehicle, officers found marijuana inside. *Id.*

Officer Maisel corroborated details of Ms. Myerson's tip like the police did in *White*. Op. 6. Officer Maisel observed the defendant driving toward Oakledge Park—as Ms. Myerson alleged—like the officers in *White* saw a woman exit an apartment building and drive to a specific motel as the tip asserted. *Id.* Ms. Myerson noted that she witnessed the defendant leave fifteen minutes before submitting her tip at 10:30 AM like the informant in *White* provided a time of departure. *Id.* at 5–6. While the informant in *White* predicted that the woman would enter a brown station wagon and the vehicle that Officer Maisel stopped was

white and not silver or gray as Ms. Myerson suggested, Ms. Myerson gave other details that exactly matched the defendant's vehicle, such as that it had a Ben & Jerry's bumper sticker and a University of Vermont sticker in the window. *Id.* at 6.

In addition, Ms. Myerson's tip alleged an "ongoing emergency" because she wrote "[t]his is urgent" and described how she was "afraid" that a man driving toward Oakledge Park might use a firearm. *Id.* at 5. While Ms. Myerson did not write that she saw the firearm, she heard the defendant say that he bought a gun to "convince" debtors "to stop messing around" and that he looked "REALLY angry" to her. *Id.* at 5–6. The tip did not allege "general criminality" because possessing a handgun in Vermont is not a crime—and in a situation such as the one reported by Ms. Myerson, it is vital that law enforcement respond quickly to prevent harm to the community from occurring. *Id.* at 6–7. Officer Maisel thus had reasonable suspicion to stop the defendant because he corroborated some elements of the tip that alleged an "ongoing emergency."

III. The totality of the circumstances supports a finding of reasonable suspicion.

Whether reasonable suspicion exists is determined by a totality of the circumstances test. *United States v. Sokolow*, 490 U.S. 1, 8 (1989). An informant's tip that exhibits sufficient indicia of reliability or is sufficiently corroborated will meet the low bar of reasonable suspicion. *See White*, 496 U.S. at 330–31 (discussing how the totality of circumstances analysis involves evaluating a tip's indicia of reliability and police corroboration); *United States v. Elmore*, 482 F.3d 172, 179 (2d Cir. 2007) ("When the informant's tip, standing alone, lacks sufficient indicia of